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Vol. II

163
TRANSCRIPT OF RECORD

537028
U. S. S. C.

Supreme Court of the United States

OCTOBER TERM, 1942

No. 201

AMERICAN MEDICAL ASSOCIATION, A CORPORATION,
PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 202

THE MEDICAL SOCIETY OF THE DISTRICT OF
COLUMBIA, A CORPORATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JULY 2, 1942.

CERTIORARI GRANTED OCTOBER 12, 1942.

INOS. 2015 2002

VOL. II pp. 753 to 1529

RECORD ON APPEAL

FILED

JUL 3 1942

ELMORE CROPLEY
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IN THE

**United States Court of Appeals for the
District of Columbia**

APRIL TERM, 1941

SPECIAL CALENDAR

FILED NOV. 12 1941

No. 7929

Joseph W. Stump
CLERK

**AMERICAN MEDICAL ASSOCIATION, A CORPO-
RATION, APPELLANT,**

vs.

UNITED STATES OF AMERICA, APPELLEE

No. 7930

**THE MEDICAL SOCIETY OF THE DISTRICT OF
COLUMBIA, A CORPORATION, APPELLANT,**

vs.

UNITED STATES OF AMERICA, APPELLEE

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA**

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Mr. Leahy: Attached to the card is a signed release which she signed when she left the hospital September 17, 1938. It reads as follows (reading):

"In leaving the Emergency Hospital against the advice of Dr. J. H. Harris I assume all responsibility for the results that may follow.

Signed: Mrs. H. A. Austin.

Witnessed: J. H. Harris. Isabelle M. Kanfoush, R. N."

DR. THOMAS J. DUGAN, JR., a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a physician at the District Training School, where I have been since June 15, 1940. I graduated from George Washington Medical School in 1936, interned at Emergency Hospital, was assistant resident and resident in surgery at Garfield Hospital from July 1, 1937 to June 30, 1938. As assistant resident in surgery primarily my duty was to assist the resident in surgery, helping with operations. On the night the resident was off, or at any time he might be absent, the assistant resident is in charge. More responsibility attached to the office of resident, and the resident was allowed to operate on more cases under supervision of the staff doctors. I was at Garfield Hospital when a Miss Elizabeth Tew was admitted there. I wrote a report that night, which will give the date. It was understood at the hospital that in case anything unusual happened that a report was to be made thereof to the superintendent, and on several occasions I have been asked to write reports of something that happened in the hospital while I was on duty. The reports were made to the superintendent. I identify Gov. Ex. 488 for identification as the report made by me of what happened on the night of February 26, and my signature is thereon. Def. Ex. 2 is the hospital chart of Garfield Hospital of Miss Tew, and the accompanying papers are the records of Miss Tew's case. I first saw Miss Tew at the hospital sometime between 7:30 and 8:30. She was assigned to a room in Ward B and when I first saw her was in company of a nurse and one or two other persons. Later Dr.

Harry Kerr requested me to make an examination of Miss Tew. Dr. Kerr was the senior surgical staff man on duty at that time at Garfield. In pursuance of this request I examined Miss Tew around 9 o'clock. As a result of my examination I concluded that the case was not acute enough that it had to be operated that night. I saw Dr. Selders at the hospital. I reported the result of my examination to Dr. Kerr and Dr. Kerr asked me to tell Dr. Selders that he would not be allowed to operate in this case as it was not considered an acute emergency.

Def. Ex. 8 and 9 (being identical) were received in evidence and read to the jury as follows:

Mr. Leahy: The two papers which have just been identified are the original and a copy on the letterhead of Garfield Memorial Hospital, School of Nurses, Washington, D. C., dated February 26, 1938.

"DR. SELDERS:

"On the advice of H. H. Kerr, the case of Miss Elizabeth Tew is not considered an acute surgical emergency.

T. J. Dugan, Assistant Surgical Resident."

Dr. Selders asked me to sign Def. Ex. 8 and 9 because, after the examination of Miss Tew by me, Dr. Kerr and I concluded that there was no acute emergency sufficient to allow a man to operate who did not have surgical privileges at Garfield Hospital, and, for that reason, the paper was given to him. Dr. Selders only had surgical privileges in the case of a surgical emergency. I informed Dr. Selders that I was very sorry but that he would not be allowed to operate on Miss Tew. I also conveyed this information to Miss Tew. When I told Miss Tew of this fact a young lady, a young gentleman, Dr. Bolton, and a nurse, Miss March, were in the room.

Q. Give us to the best of your recollection what was said by you?

A. This was after Dr. Selders had been refused permission to operate. Is that what you mean?

Q. Yes. When you told Miss Tew about it.

A. I went to Miss Tew's room because I felt it was only right that the hospital—

The Court: Just what you said.

The Witness: I don't remember the conversation but as far as—

Mr. Leahy: The substance.

A. The substance was that since Dr. Selders was not on the courtesy staff of Garfield Hospital he would not be allowed to operate on Miss Tew, but that we would be very glad to have any member of the staff of Garfield or, for that matter, any member of the courtesy staff of Garfield Hospital, who she would want, or would name, we would have that doctor come down and examine her, and she could then follow his advice. After that she said, "No," she wanted Dr. Selders. I said, "I am sorry, Dr. Selders cannot operate on you." Then she said that she would leave the hospital.

I said, "Well, if you leave Garfield, will you sign this hospital release," which I believe is here.

She said, "Yes, I will be glad to sign it."

Immediately Dr. Selders, or one of the other two witnesses said, "No, you can't," because she is under morphine, and then Miss Tew said, "No," she would not sign it. I said, "That is perfectly all right with me. Are you going to leave the hospital?"

She said, "Yes."

Then I said, "You are going to leave against the advice of the hospital and I will read this release to you."

Q. Have you it here, that release?

A. It should be on this chart. Well, anyway I read the hospital release to her and she still refused to sign it; then my recollection is that I said, "Well, I am awfully sorry," and left the room. In other words, no further discussion was entered into. Some time after that, oh, it must have been an hour, possibly two hours later, I went to Miss Tew's room by myself and said, "Miss Tew, this is a very unfortunate circumstance; I am sorry it has had to happen to you, and I am sorry we are both in this mix-up. Dr. Selders isn't able to operate in this hospital, and, if I may suggest, and if I were in your place, when you go home I would go to bed, put an ice pack on my abdomen, take nothing by mouth except a few sips of water and stay in bed, and call another separate physician who is not mixed up, not connected with either Garfield or Group Health, or any organization, except a physician of your own choosing." And at that time Miss Tew was very, very pleasant; she

was dressed and on the bed, and it was over two or three hours after she had her morphine, but then I told her not to leave until she got good and ready to leave; that there was no hurry."

The chart shows that Miss Tew was given a quarter grain of morphine at 8:15 p. m. The history, Def. Ex. 10, was given to Dr. Kruetzberg and I read this history before I made the examination.

A. "Blood pressure was 120 over 80." This is February 26, 1938:

"Nutrition, good; well developed and well nourished; not acutely ill. Head and neck—not remarkable. Chest—resonant throughout. ■■■■■■sicular breathing—no rales. Heart—within normal limits; regular; no murmurs. Abdomen—right rectus rigidity tenderness to pressure in entire R. L. Q.," that is right lower quadrant; "No palpable masses; Pelvic—not done; Extremities—negative. Sub-acute appendicitis."

That is Dr. Kreutzberg's examination.

I had no other history before me when I made the examination except what I got from Miss Tew.

In examining Miss Tew I obtained the history that she had been ill for about a week with some R. L. Q. pain and nausea, temperature around 99.4 degrees. Though there was some very slight rigidity, it was certainly not acute enough to be operated in the middle of the night and I thought the case should wait until the next morning. I identify Gov. Ex. 584 as the release slip which I read to Miss Tew that evening but which she refused to sign, saying she would not sign it and was going to leave the hospital. She had at 8:15 p. m. a quarter of a grain of morphine and this was at 9:55 p. m., so it was a little over an hour and a half since she had it. She was moderately groggy at the time. I asked Miss Tew to sign the following paper:

"I hereby acknowledge that Miss Elizabeth Tew is leaving the Garfield Memorial Hospital against the advice of the attending physicians, and that I assume all responsibility for the risk in so doing.

Also present but not signing—Miss O'Connor, Mr. Adams, Dr. Selders, Miss Tew."

While I was at Emergency Hospital I knew of doctors not on the staff of that hospital, other than Dr. Selders, who were refused the privilege of treating patients and operating there, and those other doctors were not connected with Group Health. I know Dr. Selders, have scrubbed with him, that is, have gone through a cleansing process to be sure the physician's hands are clean, and I assisted him in three to five or six operations.

Cross-examination.

By Mr. Lewin:

I was 28 years old at the time of the Tew incident. I finished my internship eight months prior thereto and had been a full fledged doctor for eight months. Dr. Kreutzberg, an interne, examined Miss Tew that night as well as myself. Dr. Kreutzberg was under me and about the same age. Dr. Kreutzberg received his degree from Georgetown University in 1937, and had been a doctor since 1937.

Q. And did anybody else at Garfield make this examination of Miss Tew except you two gentlemen?

A. Not that I know of.

Q. When you made the examination of Miss Tew you had heard she was a Group Health patient?

A. I believe I had, yes.

Q. You had heard that Dr. Selders had posted the operation?

A. That is correct, yes.

Q. You knew that he was down in the room scrubbing for the operation?

A. Oh, no; of course not.

Q. Didn't you know that?

A. No, of course not. Dr. Selders never did scrub that night. His hands were just as dirty when I saw him last as they were when he first came in.

Q. He came in to go down to scrub, did he not?

A. Yes, he came in and was going to scrub. I tried to get him. I would have stopped him before, if I had been able to get him. If I had reached him I would have said, "You haven't surgical privileges in this hospital, so you can't operate," but I couldn't get him.

Q. The point is that he had called the hospital, had posted the case; had sent the case there, and Miss Tew had been

taken to her room, and this doctor had on his scrubbing suit and was ready to go to work.

A. Yes.

Q. And then you stopped him?

A. Yes, I did.

Q. You knew that he was down there ready to scrub at the time you made this examination?

A. May I say something further?

Q. Certainly, but I wish you would answer my question.

A. This is all fine if we didn't have anything else to do, except sit there and take care of Dr. Selders, but it so happened that on that particular night it was awfully busy, if I may say so, because I was scrubbing with the other case posted five minutes before Dr. Selders came, an appendix that Dr. Smiler did; I was tied up there. At the same time there were one or two catherizations to be done; and I had to take care of this other work in addition to trying to get hold of Dr. Selders, and when he did get in I was in the operating room working on another case.

Q. But you knew that Dr. Selders was ready to proceed with the operation?

A. Yes.

Q. And you knew that she was a Group Health patient?

A. Yes.

Q. You also knew that some doctor objected to Dr. Selders performing the operation?

A. What doctor?

Q. Didn't you know that a member of the staff there objected to Dr. Selders' presence in the hospital?

A. Oh, Miss Patton, who was assistant superintendent of nurses, a fuss budget, came up to me and said, "Dr. Dugan, Dr. Edgar Davis is all upset because Dr. Selders is going to operate."

Q. Who is Dr. Davis?

A. A surgeon in town.

Q. A member of the Medical Society?

A. Yes.

Q. Was the statement that Miss Patton made to you, was that what put you in motion that caused you to examine Miss Tew?

A. No, indeed. Miss Patton had nothing to do with it. She was saying how awful it was, what a terrible thing it was that Dr. Selders, who had no courtesy privilege, was

going to operate; this and that; it amounted purely to nothing, so far as what she said.

Q. You hadn't told Dr. Kerr at the time you made this first examination?

A. I think I had talked with Dr. Kerr. Of course, it was my right and privilege to examine any patient in the hospital I wanted to, particularly, on surgical service. In other words, I could have examined her as soon as she got in bed, but if I felt there wasn't reason to examine the case I didn't have to.

Q. The point is you examined her as the result of Miss Patton's having told you Dr. Davis had said something about it, and how he felt.

A. No, I examined her as the result of my own desire, before I talked with Dr. Kerr.

Q. You just told us this was a very busy night.

A. Yes.

Q. Dr. Selders hadn't asked you to examine his patient?

A. No.

Q. Dr. Kerr hadn't asked you to examine the patient?

A. No. Here is the reason why—

Q. Just answer the question. I will give you a chance to explain. No one had told you to examine that patient?

A. That is correct.

Q. You wouldn't ordinarily examine that patient on that busy night without somebody telling you to do it?

A. Might I put in something there?

Q. Yes.

A. Yes, I would have on that busy night whether anybody told me to examine her or not.

Q. Didn't you examine that patient as the result of what Miss Patton had told you Dr. Davis had stated?

A. No, absolutely not. Do you think—

The Court: Don't ask questions. Just answer them. Let the lawyers do that.

The Witness: I am sorry, your Honor.

By Mr. Lewin:

Q. Isn't this a correct statement of what happened? At 7:10 a Dr. Smiler had called and posted an acute appendix in the ward there?

A. May I read this?

Q. About 7:15 Miss LaFevre called and said that Dr. Selders had posted a case for 8:30, and did he have surgical

privileges. That you then went to Mr. Macatee's office and found him off duty. Now who is Mr. Macatee?

A. He was the night superintendent of the hospital or, I think his title is, probably, treasurer of the hospital. He was the business manager who generally was on duty to ten-thirty or eleven at night.

Q. You tried to call Dr. Selders but were unable to reach him?

A. Yes, that is correct.

Q. And Dr. Davis, that is this Edgar Davis, had heard that Dr. Selders had posted a case. Now how did he know that?

A. Through Miss Patton.

Q. "I called Dr. Eisenman immediately and was told Dr. Selders did not have surgical privileges unless it was an acute emergency." Who told you that?

A. I was told by Mr. Eisenman.

Q. You called Mr. Eisenman and he told you Dr. Selders didn't have surgical privileges unless it was an acute emergency, "a ruptured appendix"?

A. Yes.

Q. Didn't you say before the grand jury that "Unless the appendix is ruptured or very warm"?

A. It is essentially the same.

Q. Yes?

A. It would have to be an awfully acute condition.

Q. And Dr. Selders, then, would not be permitted to operate in that hospital unless it was an acute emergency, in which case he would be entitled to do so; isn't that true?

A. I think probably anybody could get privileges if somebody was going to die.

Q. Now, then, Miss Patton came up to you, and she was the assistant superintendent of nurses, was she not?

A. That is correct.

Q. And she told you that Dr. Edgar Davis had been in to see her and that Dr. Davis had said that if Dr. Selders was to operate he would have to take his patients elsewhere?

A. That was second-hand, though, from her.

Q. You believed it, though, coming from her, did you not?

A. It didn't make any difference to me one way or the other what she said.

Q. Why did you put it in this report then?

A. I tried to put in everything that happened that night so that if anything came up in the future I would have a record of what transpired.

Q. It was after those talks with Mr. Eisenman and Miss Patton that you decided to examine Miss Tew?

A. I decided to examine her, yes.

Q. Wasn't it the result of Eisenman and Miss Patton's conversation with you, the latter having related what Dr. Davis said?

A. May I ask a question? It is purely this: If I called up Dr. Kerr what was I to tell him about the patient? In other words, when I called him it would be relative to Miss Tew and, as a result, I had to at least be able to tell him something; whether she was white or colored; was she tender? In other words, something about the case. That is the only reason I examined her.

Q. The first thing you told Dr. Kerr about was the G. H. A. connection and that Dr. Selders wanted to operate; isn't that true?

A. No, I don't think so, as far as I remember. It was all wrapped up in the same thing. I didn't have to say G. H. A. to Dr. Kerr because he knew Dr. Selders by name.

Q. Dr. Kerr knew about Dr. Selders in Group Health?

A. I suppose he did, because he was on the surgical staff that refused him the privileges.

Q. And when you called Dr. Kerr, you called attention to the fact that here was a G. H. A. patient, did you not?

A. Not that I know of.

Q. Didn't you say on your memorandum that you told him about the circumstances of the patient?

A. Circumstances of the patient coming in, having a more or less tender abdomen. I didn't mention G. H. A. It wasn't necessary for me to mention it to Dr. Kerr that she was a Group Health case. He knew; after all, he was a staff man.

Q. Why was it necessary to call Dr. Kerr?

A. Because Dr. Selders, like a lot of other men, didn't have surgical privileges at Garfield.

Q. Therefore you called Dr. Kerr to see whether or not an exception might be made in his case?

A. That is it.

Q. And didn't tell him it was Dr. Selders with a G. H. A. case?

A. No, I didn't.

Q. Didn't you say you called to see whether an exception might be made?

A. I don't think I said "an exception." I called to explain the situation to him and to tell him that Dr. Selders wanted to operate.

Q. Do you call Dr. Kerr every time you make an examination of a patient?

A. I would if there was any question in my mind about it.

Q. And you called Dr. Kerr on that occasion because there was a question in your mind?

A. Yes.

Q. And you must have told him that it was Dr. Selders who wanted to operate and that the patient was a G. H. A. case, didn't you?

A. I may have mentioned it.

Q. Aren't you sure that you did mention it? You just told us that the reason you called Dr. Kerr was because you had a question in your mind; the question was whether Dr. Selders could operate.

A. Yes.

Q. Now do you mean to say that you didn't explain those circumstances to Dr. Kerr?

A. I may have; not that I remember.

Q. What did Dr. Kerr tell you? He told you to call Dr. Eisenman, did he not?

A. I don't know whether he did or not.

I think Dr. Kerr called Dr. Eisenman. Dr. Eisenman immediately called me back and told me that under the circumstances, having no surgical privileges, Dr. Selders could not operate. I told Dr. Kerr that it was a case that Dr. Selders had. I didn't want to decide what an acute surgical emergency was and passed it to Kerr to let him stick his neck out as to what was an acute surgical emergency.

Q. I ask whether the statement on the Krentzberg history; the statement of her illness that you obtained from the patient herself; the tenderness that you found in the R. L. Q. region; the temperature of 99.4 degrees, and the white blood count of 14,400 did not fit in very well with a diagnosis of an acute appendicitis?

A. I didn't think it was acute, sufficiently so to be operated that night.

Q. And Dr. Selders did think so?

A. Yes.

Q. So it was your judgment against his?

A. Dr. Selders made a statement that any time you can diagnose an appendix it should be operated immediately. I didn't entirely agree with his statement.

Q. And you weren't so sure of your diagnosis, and you called Dr. Kerr?

A. May I say something first? Relative to my duties as resident at the hospital—

Q. Well, if you would like to.

A. (Continuing) I would like to. Supposing a patient came into the hospital; separate and distinct, a ward case that couldn't pay a thing. The interne in the emergency room would examine the girl. I would examine her. If I thought it was an acute case I would pick up the phone, call the staff man on service, Dr. Kerr, and he would either say "Go ahead and operate the case" or "I will come down" or "We will leave it until tomorrow."

Q. Is that the usual procedure when a patient comes there with her own physician, who has diagnosed the case as acute and is ready to operate?

A. It is not the usual thing, no.

Q. It is a very unusual procedure to go over the diagnosis made by a patient's own doctor, is it not?

A. I won't say that, because I recall two specific cases in which it was a good thing that the interne did it.

Q. Were these cases like this? When Dr. Selders had already diagnosed the case as acute, and when all these symptoms were present as have been described?

A. Well, it is not a run of the mill; I would not have called Dr. Kerr if the man had surgical privileges. He could have taken the hospital, so far as I was concerned.

Miss Tew had morphine at 8:15 p. m. and I examined her shortly after 9:00 p. m. She was still groggy and would remain groggy for four or five hours.

DR. HARVEY F. KREUZBURG, a witness for the Defendants.

Direct examination.

By Mr. Leahy:

My office is at 7852 Sixteenth Street, Washington, D. C. I have been practicing medicine not quite two years. I

graduated from Georgetown in 1937, served my internship in Garfield from 1937 to 1939. I recall the occasion when Miss Elizabeth Tew came to Garfield Hospital. I was on duty as interne on surgery. I saw her around 8 or 9 o'clock and made an examination of her. At that time I took a history from her. She had been having discomfort in her pelvis, moderate pain in her right lower quadrant, and some backache. She told me she had been examined by a Dr. Selders who told her that he thought something was wrong with her appendix and that her uterus was misplaced, retroverted, and that surgery was indicated, and that at the time such surgery was performed he would remove the appendix and suspend the uterus or any other pelvic pathology that needed correcting. Following the receipt of her history I made an examination of her and concluded that she might possibly have a sub-acute appendicitis, but not an acute one, and I couldn't express an opinion about the pelvic pathology because I had not done a bimanual examination. There was no condition at that time that indicated an immediate operation. When I examined Miss Tew no morphine had been administered to her. I didn't see her leave the hospital. I didn't have any conversation about the case with Dr. Selders that evening.

Cross-examination.

By Mr. Lewin:

Q. Dr. Kreuzburg, you mean to tell this jury that Miss Tew told you all this business about the inverted uterus and that Dr. Selders would take out her appendix casually when he happened to operate on her for the other trouble?

A. That's what he did tell her; that's what she told me, anyway. I took her history and asked the patient those questions.

Q. Look at your history and see if—did you write the history down as you took it from her?

A. I don't remember as I—I took the history and went outside and wrote it down.

Q. Is it your custom to write up a history of the patient as she gives it to you?

A. Well, yes.

Q. Is that right? Did you write in your history that this lady was there for this inverted uterus situation?

A. No.

Q. And that this—

A. I just wrote down her symptoms.

Q. Did you?

A. Past history.

Q. All right. Let us see your history. . . . You told us some things which Miss Tew told you and which you said you put into her history.

A. No; I don't believe so. She told them to me. I did not necessarily put them into the history. I put her symptoms and her physical examination into the history.

The history written by the witness was read to the jury, as follows:

"Chief complaint: Pain in R. L. Q. Present illness: Attack began just week ago. The pain at onset was in the R. L. Q. and has remained so. She has had several episodes of nausea and vomiting the day following the onset but has had none since. No previous attacks. Past history: No serious illnesses. No operations. Respiration negative. Cardiovascular negative. Genito-urinary-severe dysmenorrhea. Nothing unusual about the last period."

After the physical examination, my diagnosis was "sub-acute appendicitis." I didn't diagnose any feminine complaint because I didn't do a pelvic examination, as I was not allowed to.

Redirect examination:

On an acute appendicitis or sub-acute appendicitis a median line incision is not made, the common incision for appendicitis would be the McBurney incision if you are certain the patient has nothing but appendicitis. If a pelvic pathology is suspected an incision is made in the mid-line, that is the center of the abdomen. You cannot use a McBurney incision to do pelvic surgery, although with a pelvic incision you can remove the appendix.

Recross-examination:

The mid-line incision is proper surgical technique if the surgeon wishes to remove an acute appendix and also suspects that there may be other conditions in the pelvic cavity.

Dr. ROBERT M. BOLTON, a witness for the defendants.

.Direct examination.

By Mr. Leahy:

I am a practicing physician in Washington. I graduated from George Washington Medical School in 1931 and had an internship at Garfield Hospital from 1931 to 1932. I recollect Gov. Ex. 584 as papers concerning the case of Miss Elizabeth Tew at Garfield. I would have been the anesthetist in the case. I saw Miss Tew that evening at the time Dr. Dugan and I went up with the release statement for her to sign. I went into Miss Tew's room on that occasion. She was in bed, a man and woman and Dr. Selders were in the room. Dr. Dugan asked Miss Tew to sign the release. She was first willing to sign the statement and then her two friends and Dr. Selders urged her not to sign it, giving as a reason that she had had morphine and wasn't in her right mind. When Miss Tew told Dr. Dugan she wouldn't sign it he said "Allright," and Dr. Dugan and I left the room.

Cross-examination.

By Mr. Lewin:

Under ordinary circumstances Miss Tew should have been able to sign the release, in my opinion. You could give enough morphine to a patient so she would not be in condition to sign a release and I would not advise a patient signing a release if she were groggy from morphine.

Redirect examination:

The patient had one quarter of a grain of morphine and that is not enough morphine to make a person groggy under ordinary circumstances, and I didn't think Miss Tew was groggy. She was told by Dr. Dugan that she might remain in the hospital if she wished, as long as she desired.

Recross-examination:

I didn't examine the patient, didn't know how much pain she was suffering, and I had no reason to quarrel with Dr. Dugan's statement that he considered her in a groggy condition.

Mrs. MARGARET JONES, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a Registered Nurse employed at Emergency Hospital, where I have been working since November, 1934. I identify Def. Ex. 3 as the record of Sara Abbott, a patient brought into Emergency Hospital on January 26, 1938. I personally remember the case, and when Miss Abbott was brought into the emergency room I took the record on her. I was informed by the patient of her name and address and that she had been struck by an automobile an hour previously, and complained of an injury to her leg. Dr. Phillip Smith was the doctor in the emergency room that took care of Miss Abbott. He ordered a pillow splint put on the injured leg because of the possibility of a fracture of the small bone, and an ice cap to the leg to take care of the swelling and relieve pain, and I put them on. Medication for the relief of pain was also ordered but was refused by the patient. I helped give her first aid in the emergency room, then the patient was admitted to the hospital proper, to a semi-private room.

In this case the ambulance received a call from the All-States Hotel and at 11 minutes past 10, 15 minutes later, Miss Abbott was brought into the emergency room. The injury to the patient was diagnosed by Dr. Smith as hematoma of the left leg, with a possible fracture of the left fibula, a small bone in the lower leg, for which treatment an ice cap to the left leg was provided, a pillow splint was applied, codine refused. A pillow splint is a pillow put around the leg and tied securely with bandages to immobilize the part. The patient was admitted to the service of Dr. William Marbury, a member of the staff of Emergency. Dr. Otis Snyder took her history, and he is now in the Army.

Cross-examination.

By Mr. Lewin:

Dr. Phillip Smith was an interne who directed me to administer first aid to the patient, which I did. After leaving the emergency room the further treatment prescribed for her was as follows: "Remove the pillow splints; elevate leg; apply continuous cold compresses. Regular diet."

The next morning the patient was seen by Dr. Marbury, who ordered an X ray.

DR. SAUL HOLTZMAN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a practicing physician in Washington. I graduated from George Washington University in 1937, interned at Garfield Hospital from June, 1937, to June, 1938. I identify Def. Ex. 1 as the official record of Garfield Hospital of the patient Miss Sara Abbott, admitted January 27, 1938. I saw Miss Abbott in the hospital and examined her personally. She had been X rayed before I saw her. The X ray showed there was no evidence of fracture to the bones of the upper two-thirds of the right leg. I attended her while at Garfield. The nurses kept a record of the patient while she was in a ward. From my examination of the patient I say she was comfortable, not acutely ill, and was able to give a coherent detail of her admission to the hospital. There was no evidence of any fracture. There was some tenderness over the outer portion of the right leg, but no symptoms of any fracture whatsoever, so far as the physical examination went. The rest of her examination was essentially negative. By "negative" is meant no abnormal finding. The history I obtained from the patient was as follows: She was struck by an automobile while crossing the street, falling to the ground, didn't lose consciousness, was helped to her feet; complained of pain in her right leg and was taken to Emergency Hospital.

Cross-examination.

By Mr. Lewin:

The patient remained in Garfield for three weeks. She was under the care of a hospital physician all the time, and was in bed most of the time.

Def. Ex. 1 was received in evidence and read from to the jury, as follows:

"Miss Sara Abbott, residence All States Hotel. She had a mark made by the nurse Miss Kemble of 98.4. Ice cap

to right leg. Enema. Sodium luminal. Foot made comfortable by cotton pad. Medication given; slight pain in leg. Dozing at intervals; sleeping.

Friday"—the next day—"refuses medication for discomfort. Quiet. Apparently sleeping. Quiet. A fairly good night.

Next day: Good results. Apparently sleeping. Sleeping. Quiet.

Next day: Fairly good day.

Saturday: Bath given. Evening care. Summary: Appetite fair, good day.

Sunday:" Same treatment down through "Apparently sleeping, appetite good.

Monday: Quiet. Sleeping. Good day.

Tuesday: Sleeping, slept well; patient's condition seems good this morning. Appetite good. Reading. Appetite good. Comfortable". These entries are made at different times of the day. "Eight o'clock; resting quietly. Summary: Appetite good; good day.

Tuesday:" the same. "Sleeping, sleeping, slept well. Comfortable; good day; slept good.

Wednesday: Appetite good. Quiet."

And then the final entries:

"Quiet and hot water bottle to leg and knee. Sleeping.

Summary on third day of February: Good day. Sleeping, a good night.

Friday: Sleeping; a good night. Patient's condition seems good this a. m. Reddened area on leg decreasing. Seems softer. Reading; quiet; no complaint." Summary of the day was: "Good day.

Saturday: Sleeping, again, again, comfortable; appetite good; comfortable." Apparently sleeping continuously through the next day, in same manner. "Summary: Appetite good, sleeping; quiet; resting quietly, sleeping, good day. Sleeping, appetite very good. Patient has two blisters on leg, apparently from heating pad; patient is up in chair."

Mr. Lewin: When was that?

Mr. Leahy: That is February 8, 1938.

"Cradle placed on bed and light bulbs inside. Patient comfortable in bed. Appetite good. Reading. Quiet. Appe-

tite good. Transferred to another bed. Apparently comfortable." She is resting quietly at 8 o'clock. "Ten o'clock: Asleep. Patient's condition seems good. Appetite good. Comfortable. Reading. Comfortable" after reading. "Comfortable at 8 o'clock. Quiet at 10 o'clock. 10:45 unable to sleep due to heat from cradle but refused amatol. Good day."

Same way Thursday, the 10th.

"Appetite good. Quiet. Comfortable. Resting. Reading. A good day.

Friday: Appetite very good. Reading. Comfortable.

Saturday, the 12th: Appetite good. Quiet. Sleeping.

Summary: Appetite good. Sleeping.

Sunday, the 13th: "same entries. "Appetite good; patient up in chair; good day.

14th: Summary: Comfortable; apparently sleeping well. Sleeping. Good day.

16th: Comfortable, sleeping: Summary: Appetite good; patient walking around room. Good day, and night.

17th: Patient up in chair; reading; appetite very good.

17th: Discharged."

DR. WILLIAM D. MARBURY, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a practicing physician in Washington and have been since before the last war. I graduated from the University of Virginia in 1909, interned first at New England Memorial Hospital at Baltimore, was a resident for two years at Providence, and then went overseas. During the war I was in the British service for two years as an American officer loaned to the British Army. I specialize in surgery. I am on the regular staff at Emergency and have been since 1922, and have the surgical service for four months out of the year. Unattached patients, those patients without a private doctor, are given treatment by the regular staff gratuitously except in compensation or liability cases. I identify Def. Ex. 3 as the official record of Emergency Hospital of Miss Sara Abbott. They show the treatment rendered to that patient. The emergency card shows the pa-

tient was gone over generally by one of the internes, who ordered a pillow splint and some codine, which the patient refused, and she was sent to a semi-private ward. The patient was admitted at 11:30 p. m.; the pillow splint was removed and an ice cap or compress applied. The usual things were done: A specimen was taken; she was given codine grain one and aspirin grains ten, and then some luminal, and an X-ray was ordered. At 2 p. m. the next day she was transferred to Garfield Hospital.

The only thing you could do in a case like that would be to give rest, excluding the possibility of a fracture, and make the patient comfortable. If the fibula had been broken it would not have been necessary to set it unless the large bone was also broken. Everything that should have been done for the patient was done for her while at Emergency and she signed a release slip on January 27, 1938, and left the hospital against the advice of the physicians.

Cross-examination.

By Mr. Lewin:

I was not called and did not see the patient until 10 o'clock the morning after her admission when I was making my rounds. With the exception of the surgical interne the patient had not seen a surgeon from the time she was admitted until I made my rounds the following morning.

Q. It says she had a fairly good night. That is the way the doctors talk, not the way the patient feels. Now, it is usual in a case of this character for the patient to suffer from shock and distressed state of mind, is it not?

A. I think you have to separate those.

Q. Will you, then: Isn't it usual to suffer from both, Doctor?

A. From the appearances and the history of this case I wouldn't say, if that leg was put at rest, there would be a great deal of suffering.

Q. This patient was a fairly elderly lady?

A. She was 65 (examining document).

Q. She had been knocked down on the street, brought to your hospital in an ambulance, and she was suffering somewhat, and she wasn't sleeping very well that night, as the history shows; and she remained in Garfield Hospital three weeks after that time, receiving daily treatment, as her

history shows. Would you say that the chances are she was suffering from a great deal of mental distress on the night of her admission to the Emergency?

A. I wouldn't say necessarily. It would depend somewhat—you hitch it up with staying three weeks at Garfield, but apparently she didn't get much hospital treatment there.

Q. You say that from hearing the history read this morning?

A. Yes, and knowing of the case.

Q. Now, if a patient like that brought into a hospital late at night asked for her own surgeon, do you think that would be normal?

A. Yes.

Q. And wouldn't the fact that she could have her own surgeon be conducive to giving her a most restful time in the hospital and to a more rapid recovery?

A. I can't answer that; it would with some people. Some people do not know their surgeons; they know their medical advisers much better; they do not know who their surgeons will be.

Q. This lady didn't know how good you were, Doctor; didn't know anything about you?

A. She never did know anything about me.

Q. You had never known her before?

A. No.

Q. But suppose she asked for another doctor, one that she did know about and had confidence in. Don't you think that if she had been able to procure that doctor, such a doctor, she would have been relieved mentally and she would have been much more comfortable? Don't you think so?

A. I think she could have had any physician on the courtesy staff of the hospital.

Q. But suppose she asked for one not on the courtesy staff, one she knew. Don't you think that might have helped her case?

A. Your guess is as good as mine; I don't know.

Redirect examination:

Q. Was that patient what you call an emergency case from a medical standpoint?

A. Well, that depends on how you look at an emergency case. She was hit by an automobile, and until you find out something about that you have to consider that as emer-

gency. As it turned out you certainly wouldn't call hers a very grave emergency.

Q. And was there anything unusual about her in calling for a doctor who was not on the staff and being told he could not practice in that hospital?

A. No, sir.

Q. How long have you known of that rule to be in effect?

A. I couldn't tell you; it has been some years. It has been, I reckon, ten years, or thereabouts. Well, I say that, but actually that was true in Baltimore, that was in 1910; I thought at one time I would stay in Baltimore and practice there, and I made some connections toward getting on the courtesy staff of one of the hospitals, and I couldn't do anything until I could. That was 20 years ago.

Q. And that is true, so far as you know, throughout the United States?

A. There are exceptions in the smaller towns: they have what they call "open hospitals", where anybody can come in and do anything.

Q. But in the municipal centers or larger hospitals do they have courtesy staffs?

A. I think almost universally, and only those on one of the staffs may practice in such hospitals.

Recross-examination.

Q. Isn't it usual to make exceptions in urgent cases?

A. I couldn't tell you that because they have a lot of emergency hospitals, and in a good many hospitals so many are emergency cases; I think that is taken care of by the staff.

Q. This wasn't the kind of a case that would have called for any extraordinary skill to treat it?

A. No, I don't think so.

Q. The presumption would be, would it not, that it could have been satisfactorily treated by any graduate surgeon?

A. This particular case would have been all right if it hadn't been treated at all.

Q. It really would not have been subjecting her to any great risk to permit her to have any doctor she desired, would it?

A. Not a bit.

Q. And wouldn't have hurt the hospital if the doctor she wanted had been allowed to come in and prescribe medicine for her?

A. "Hurt": How do you mean?

Q. Would it have hurt it in any way, the hospital to have permitted another doctor not on the staff to come in?

A. I think that is covered by a rule. I do not think it is a matter of having a doctor come in that is forbidden, but it is taking the patient as a patient and treating her. To do that you have to be on the courtesy staff.

Q. Suppose her doctor had been permitted to come there and prescribe for her the ice bags and to buoy her up a little bit, that wouldn't have hurt the hospital, would it?

The Court: That is going into psychology rather than medicine, isn't it?

Mr. Lewin: Yes, but as to the effect on the patient I thought the doctor might be able to answer.

The Court: I don't think this gentleman is holding himself out as a psychologist.

By Mr. Lewin:

Q. Of course you are a member of the District Medical Society and the American Medical Association?

A. Yes.

Q. And the Washington Academy of Surgery?

A. Yes.

Q. I think you are president of it?

A. Yes.

DR. FREDERICK JOHN CARPENTER, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a physician attached to the Reformatory at Lorton, Virginia. I graduated from McGill University and interned at Emergency from 1936 to 1938. I was on duty when Miss Sara Abbott was brought into the hospital. I saw her after she was assigned to a room, observed the treatment given her, saw her before she was transferred to Garfield when I made the rounds with Dr. Marbury. An X-ray was suggested but she left the hospital before it could be arranged. From a review of the treatment given the patient I state it was all proper treatment and that, in my opinion, everything that could possibly be done was done for her.

DR. WILLIAM DICK CUTTER, Defendant, a witness for the defendants.

Direct examination.

By Mr. Leahy.

I reside in Chicago; am secretary of the Council on Medical Education and Hospitals of the A M A and have been for nine years. I am a graduate doctor; graduated from Yale in 1899 and from Johns Hopkins in 1905; interned at the French Hospital in New York City, 1905-1906; engaged in private practice at Bisbee, Arizona, from 1906 to 1910, taught medicine at the University of Georgia, 1911 to 1919, was secretary to the Board of Medical Examiners in New York State, 1919-1923, Dean of the Medical School of New York Post-Graduate School of Medicine, 1923-1928, and Dean of the Medical School, University of Southern California, 1928-1931.

The Council on Medical Education and Hospitals of the A M A was formed in 1904 by resolution of the House of Delegates and reports directly to them. The function of the Council is to examine and study medical schools and hospitals in order to determine what are proper standards of performance in the field of medical education and hospital education, and having formulated reasonable standards of performance with respect to medical education these are submitted to the House of Delegates for ratification, and then when the standard is set up we again examine these institutions to see whether they fully conform to the standard. If so, their names are published on our list. These examinations are made only upon the request of the institution who wishes to be included in our list.

The House of Delegates of the A M A is chosen in the following manner: Each state medical society chooses a certain number of delegates in proportion to the number of members, just exactly as members of the House of Congress are selected on the basis of population, and those delegates meet once a year, and they comprise the legislative force of the A M A. Each state has a state society and the District of Columbia also has a society.

The chairman of the Council is Dr. Ray Lyman Wilbur, President of Stanford University, and the other members are all practicing physicians. The principal work of the Council is the visitation of all schools and hospitals request-

ing examination to help them qualify for inclusion in the list which we publish. Sixty-four four-year medical schools in the United States are now on the approved list. Of the 6,000 hospitals on the A M A register 1,000 have asked for the Association's approval for their educational training of internes and residents. Those hospitals training internes and residents are carried on a separate list. When these hospitals request approval they are examined and an analysis is made of each hospital for the purpose of bringing it up to standard to insure proper supervision of training of internes and residents. There are 700 hospitals approved for interne training and some 300 or 400 more approved for the training of residents in specialties. An interne is a man who has just completed his undergraduate course, who goes into a hospital to gain experience. After he has served his internship of a year, year and a half, or two years, if he desires further training he is classified as a resident, and residents are usually assigned to specific departments such as medicine, orthopedics, obstetrics, and so on.

There were 19 hospitals in the District of Columbia as of 1937, 12 were approved for interne training; two—Columbia and Episcopal—were approved for training of residents; these two hospitals are not approved for interne training as they are special hospitals providing special services. On receiving a request for approval a printed form calling for information is sent the hospital, along with an application for approval. When these papers are returned completed, a card is made out and one of the doctors on the A M A hospital staff visits that hospital, checks the information furnished, makes an investigation, and then prepares a report concerning the hospital. A copy of the report is sent to the hospital for comments or correction. At the next meeting of the Council the report with recommendations is submitted to the Council and the Council acts to give or withhold approval. The Council maintains a staff of investigators to examine hospitals and medical schools. A different investigation is needed in a medical school, as that is a very complicated situation and covers four-year periods, whereas the program in a hospital covers only a year.

The standards formulated by the Council are known as "Essentials," and the hospitals are examined to see whether they can conform to these essentials and can give

proper education to internes. When the Council was created in 1904 there were a great many poor medical schools with no supervision over them. The Council was formed to exercise some degree of supervision, get the facts and make the facts known. The same situation prevailed concerning hospitals, and the object was to secure the facts concerning the hospitals and their standards, for the purpose of letting prospective internes know the situation. The Council only collects data and information, and publishes the same for educational purposes. As secretary, I direct investigations of medical schools and hospitals. The Council publishes the factual data obtained in the Educational Number of the A M A Journal; a little reprint known as "The Essentials of Medical Schools" is also published, which constitutes the basis on which medical schools are judged, as to whether they should be included in this list or not. The information is published and made available also in what is known as the Hospital Number of the Journal and in "Standards Applicable to the Registration of Hospitals." In addition there appears in the annual Hospital issue of the Journal a register of hospitals. In the District of Columbia, besides the private hospitals, the Naval Hospital, Walter Reed Hospital, Gallinger Hospital, and Veterans Hospital—Government institutions—have applied for approval of the A M A.

Def. Ex. 11 is the "Essentials of a Registered Hospital" prepared by the Council on Medical Education and Hospitals of the A M A. Def. Ex. 12 is "Essentials of a Hospital Approved for Training Interns." Def. Ex. 13 is the "Essentials of Approved Residencies and Fellowship."

(Def. Exs. 11, 12, and 13 were received in evidence.)

I recall the Mundt resolution which was passed in 1934. Following the passage of the Mundt resolution the Council on Medical Education and Hospitals took it under advisement. The Council meets three or four times a year, at the meeting of the A M A, at the Congress on Medical Education in Chicago and sometimes in New York, Washington or Denver, or some other convenient place. Early in the history of the Council it was felt desirable to give more information to the public and the profession concerning problems of medical education, and so a meeting was held in Chicago to which all persons interested were invited. At the meeting or series of meetings, papers are read on vari-

ous problems on medical education with discussions. Because the question of medical education is so closely related to the question of licensure, the various state licensing boards are invited to participate with us in the Congress. The official title of this meeting is "The Congress on Medical Education and Licensure." The Congress is an approved educational program of the Council.

In October, 1934, the Council voted to send copies of the Mundt resolution, to all hospitals approved for interne training so they might know what the sentiment was of the House of Delegates. Immediately following the meeting in October, 1934, the Council instructed me to send a copy of this resolution to all of the interne hospitals, which I did. Def. Ex. 14 is one of the letters which I sent pursuant to this action of the Council. About 700 hospitals were circulated and were advised of the Mundt resolution and no attempt was made by the Council to send letters similar to Def. Ex. 14 to any other hospitals than ones which had been approved for interne training.

Def. Ex. 14 was received in evidence and read to the jury, as follows:

"American Medical Association

535 North Dearborn St.

Chicago

Members:

Ray Lyman Wilbur, M. D., Chairman, Stanford Univ.

Reginald Fitz, M. D., Boston.

Merritt W. Ireland, M. D., Washington.

Charles E. Humiston, M. D., Chicago.

Frederic A. Washburn, M. D., Boston.

J. H. Mussler, M. D., New Orleans.

Fred Moore, M. D., Des Moines.

Staff:

H. G. Weiskotten, M. D.

Homer F. Sanger.

Carl M. Peterson, M. D.

Oswald N. Anderson, M. D.

Fritjof H. Arestad, M. D.

December 31, 1934.

1. Your attention is called to the fact that in recent years applicants who have been unsuccessful in gaining admission to American Medical Schools have migrated in large numbers to Europe. At the present time those who have graduated are returning to the United States and seeking appointments as interns. The "Essentials in a Hospital Approved for Interns", ratified by the House of Delegates of the American Medical Association, require that interns be selected from among the graduates of schools approved by this Council. Since the Council has never inspected or classified schools outside of the United States and Canada, it is evident that European schools do not fall within this category.

Furthermore, for economic reasons, there is just now a shortage of internships and some of the graduates of Class A schools have been unable to find positions. In order that our own students may not be deprived of an opportunity to complete their educations by serving their fifth years as interns, it is necessary that hospitals approved by this Council limit their choice of interns to graduates of recognized American schools whenever such are available.

However, should suitable graduates of Class A schools be unobtainable, the standing of a hospital will not be jeopardized by the appointment of a graduate of a European university provided the hospital assumes full responsibility for determining the identity of the candidate, the authenticity of his credentials, and that his professional qualifications are not less than those of the graduates of our own schools. It is recommended that, in order to protect themselves, such candidates be required to have passed the licensing examination in one of our states or Parts I and II of the National Board of Medical Examiners.

2. In hospitals approved for the training of interns, the professional standing of the members of the staff is a matter of importance. For your information I submit a resolution dealing with this subject adopted at Cleveland last June:

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on

Medical Education and Hospitals to take this under advisement.

Sincerely yours, William D. Cutter."

The last paragraph of Def. Ex. 14, beginning with the word "Resolved," is the Mundt Resolution. The Essentials referred to in the letter is Def. Ex. 12. The reason for the shortage of internships as mentioned in Def. Ex. 14, was that during the years of the depression, 1934 for example, a great many men who had served an internship were reluctant to go into practice and asked the hospitals if they could not stay on for a second year, which many of them did, staying maybe two or three years. That meant that there was not a normal number of vacancies to take care of the graduates of medical schools and they found it very difficult to secure internships. In order that these graduates might not be prevented from getting the opportunity to complete their education through the selection of graduates of foreign schools for internships, we sent this notice to the hospitals telling them that graduates of our own schools should be appointed wherever suitable candidates were available and graduates of foreign schools should not be appointed unless they had found that suitable candidates in our own schools were not obtainable.

In 1909 the classifications of medical schools were divided into three groups; Class A were considered acceptable; Class B not acceptable but which might become so; and Class C were hopeless and could not qualify. A, B, and C classifications were continued until 1928 and at that time all schools placed in Class B had closed, merged with other schools or raised their standards to those of Class A. The number of Class C were very small, and as they were very bad schools the Council decided there was no use in giving further publicity to bad schools, and discontinued the classification as Class C. Class A is now synonymous with "Approved School."

Following December 31, 1934, when we had occasion to inspect a hospital to determine its qualification, and would send them a report, it was routine practice to refer to the Mundt resolution, so the hospital might have it as a matter of information. There came a time in 1937 when five hospitals in the District of Columbia were examined by the Council. Nearly all the Washington hospitals had been examined at some time and some had been on the approved

list for a long time. Practice in examining hospitals from the time the application is received is variable because it depends on the demands which are made upon us for inspection. Re-examination of hospitals from time to time has to be fitted in with the itineraries planned by our inspectors in order to cover requests constantly received, so if we are called to St. Louis to visit several hospitals, we would make inspection of two or three others so we would not have to return to St. Louis right away. The occasion which induced the investigations and examinations of the five Washington hospitals in 1937 was a letter dated February 3, 1937, received by me from one of the professors of the faculty of Georgetown University, Dr. Cahill, stating he wanted to secure the Council's approval for two residencies, one at Georgetown and one at Providence. Def. Ex. 16 is Dr. Cahill's letter.

Def. Ex. 16 was received in evidence and read to the jury, as follows:

"Dr. James A. Cahill, Jr.,
2607 Conn. Avenue, N. W.,
Washington, D. C.

Feb. 3, 1937.

Dr. Ray Lyman Wilbur, Chmn., Council on Medical Education and Hospitals, American Medical Association, Chicago, Illinois.

DEAR DR. WILBUR:

As Director of the Department of Surgery at the Georgetown University School of Medicine, I am writing to make a formal application regarding the Residency in Surgery for two hospitals which are affiliated with the Georgetown University School of Medicine.

The Surgical Department utilizes four hospitals, two of them, namely Emergency and Gallinger are on the approved list for a Residency in Surgery. However, I am most desirous of having the approval of the American Medical Association for the resident position in surgery at both the Georgetown University Hospital and Providence Hospital. At each of these hospitals, a resident surgeon is on duty and his appointment is for one year. However, we are anticipating prolonging this term to a two years one. At George-

town the resident is under the direct supervision of the Staff and therefore receives adequate instruction. This is also true at Providence Hospital. There is also a large amount of clinical work which has increased considerably during the past few years. Would you be kind enough to place this before the Committee? If any further information is desired, I will be glad to furnish it upon your request.

Very respectfully, James Cahill, Jr., Director of Department of Surgery, Georgetown University School of Medicine."

Dr. Cahill's letter was replied to by Dr. Peterson, one of our inspectors particularly charged with work in connection with interne hospitals.

It was marked Def. Ex. 16A and read to the jury as follows:

"Feb. 10, 1937.

"Dr. James A. Cahill, Jr., Director of Department of Surgery, Georgetown University School of Medicine, Washington, D. C.

DEAR DR. CAHILL:

Your recent letter to Dr. Ray Lyman Wilbur has been referred to me for reply.

Approval of residencies by the Council is based on regular application, convenient forms for which are enclosed. Since two institutions are involved, it will be necessary to submit application for each and it will be much preferred if you submit the information yourself as responsible for the type of training which these residents will receive.

Ordinarily, upon receipt of satisfactory information, a visit is arranged by a member of the Council's staff in order that all details of the teaching program may be discussed.

The duplicate copies also enclosed are meant for the files of the hospitals under consideration.

Very truly yours,"

A reply to Dr. Peterson's letter was received from Dr. Cahill, Def. Ex. 15.

Def. Ex. 15 was received in evidence and read to the jury, as follows:

"James A. Cahill, Jr.

March 18, 1937.

Dr. Carl M. Peterson, Council on Medical Education and Hospitals, American Medical Association, Chicago, Illinois.

DEAR DR. PETERSON:

As you suggested, I am forwarding the applications for approval of the Surgical Residency for both the Georgetown University Hospital and Providence Hospital of Washington, D. C.

I will be only too glad to meet a member of the Council Staff to discuss any details which they may request.

Appreciating their consideration, I am

Very sincerely yours, James A. Cahill, Jr., Director
of the Department of Surgery, Georgetown University School of Medicine."

Enclosed with Def. Ex. 15 was the application blank from Georgetown University Hospital, read from to the jury, as follows:

"Bed capacity, 210; Residencies requested, Surgery, (1) and the next information is as to what time of the year appointments are made. "On or about February for duty effective by July 1 of each year. Length of residency, 1 year but may extend to 2; Salary, \$35 per month." The applicant "must be a graduate of a Class A Medical School and have served at least one year internship on a general rotary service." It is stated that the Georgetown University Hospital Staff is composed of members connected with the Surgical Department of the School of Medicine. "The Staff is amply qualified for instructing the resident, and in fact the resident surgeon is required to teach and serve as an instructor to various surgical groups assigned to the hospital." The names of the members of the staff were: "Dr. James A. Cahill, Jr., Professor of Surgery and Chief of Department of Surgery, Georgetown University School of Medicine. Dr. Fred R. Sanderson, Associate Professor of Surgery—Dr. Howard F. Strine—Dr. Robert E. Moran—Dr. León Martel—Dr. Frederick Fishback—Dr. Ralph M. LeComte—Dr. Waitman F. Zinn of Baltimore, Maryland."

Enclosed with Def. Ex. 15 was the application blank from Providence Hospital, read from to the jury, as follows:

"Bed capacity," 241; and the application for residency shows "Beds, 160—Occupancy, 95%". It states about the same information as the other; that the appointment will be made "on or about January for duty effective July 1 of each year." He gets \$25 per month. Qualifications: "Must be graduate of Class A Medical School and must have served at least one year internship on a general rotary service." And "The Surgical Department at Providence Hospital is composed of four chiefs, and four associate surgeons. There is also a group of assistants in surgery who serve in the Out-Patient Department." The names of the staff are: Dr. Charles S. White, Professor of Surgery, George Washington University, Washington, D. C.; Dr. James A. Cahill, Jr., Professor of Surgery, Georgetown University, Washington, D. C.; Dr. Paul S. Putzki, Associate Professor of Surgery, George Washington University, Washington, D. C.; and Dr. Fred. R. Sanderson, Georgetown University, Washington, D. C."

When the applications were received the notation was made on a card of the institution and its location and what approval it asked for, cards being available to the hospital inspectors so they may plan a trip to reach a number of groups of hospitals close together. They are taken up in the order of the application or the urgency of the application. Internships and residencies are made from July 1st. The Council makes an effort to reach the hospital as soon as possible but appointments are usually a while in advance. Though an appointment is stated to be made in February the work of the inspectors was already laid out a couple of months in advance so that when the application first came in the inspectors would hardly get to them for a couple of months, as we have a large waiting list. Dr. Peterson was selected to make the examination of the Washington hospitals and came to Washington on the 11th of June, 1937. At that time we felt George Washington Hospital, the Sanitarium in Takoma and the Columbia Hospital were due for an inspection, as the Sanitarium had been examined in 1933 or 1934 and George Washington had last been seen in 1930. Columbia had never been regularly inspected. It had been approved for a residency in gynecology. The Sanitarium

and George Washington had been approved for interne training. I did not give any instructions to Dr. Peterson as to the number of hospitals that should be examined in Washington, when he made his trip to visit Georgetown and Providence and left that to his judgment and discretion. Dr. Peterson came to the Council about 1929. I received Gov. Ex. 295. At the time I received Dr. Cahill's request for an examination of Providence and Georgetown Hospitals I had not heard of Group Health and did not know there was such an organization in formation at the time. I had never read anything of or seen any writing about or heard discussions about Group Health. Major General Ireland's letter (Gov. Ex. 295) bears our date stamp of March 27, 1937. I know General Ireland and at the time he did not hold any position in the AMA but prior thereto he had been a member of the Council on Education for nearly 20 years. I don't recognize the handwriting on Gov. Ex. 295 but I instructed a copy to be sent to Dr. Leland and Dr. Woodward. The purpose of sending a copy to Dr. Leland was that he "was responsible for the conduct of a bureau which studied those matters, and I thought he might be interested in finding out something about it." I sent a copy to Dr. Woodward because "he had lived in Washington most of his life, and I thought he would be interested in knowing what was going on." On receipt of Gov. Ex. 295 I had it filed and had no further use for it. The name of Group Health was not mentioned in the letter. There was some reference to HOLC. I had no further communication from General Ireland or from anyone else following the receipt of Gov. Ex. 295 about Group Health. I had nothing further to do with the Ireland letter and had not seen it since I filed it until it was produced at this trial.

When Dr. Peterson was instructed to come to Washington to examine Georgetown and Providence Hospitals and such others in his discretion that had to be examined I had not heard of Group Health, did not know anything about it, had not read anything about it. I did not request Dr. Peterson to do anything with Group Health. I gave Dr. Peterson no special instructions in coming to Washington. This particular trip and the examinations were absolutely routine, with nothing at all to differentiate the trip for the Washington hospitals from the examination of hospitals made in any other city in the country. Dr. Peterson at that time was engaged solely in the examination of hospitals. I was re-

sponsible for all of the work of the Council but my particular activity was in the field of medical schools. After Dr. Peterson was told to go to Washington I did nothing at all personally with reference to the examination of Washington hospitals. The reports of Dr. Peterson's examinations of the Washington hospitals came to my desk. I recall seeing them and looked at the summaries, but I don't think I searched the entire reports. The Council took action on the recommendation made by me to the Council based on those reports. The Council had access to the reports. Following the results of the examination of the Washington hospitals, there was no difference whatsoever in the procedure followed by the Council with respect to those examinations, than would have been followed with regard to a report on any other hospital in the United States. The Mundt Resolution was not attached to the report sent to the hospitals but was referred to in the letter of transmittal. A copy of the report on each hospital was sent to it and along with the report went "the reference to the Mundt Resolution." The custom is that "Whenever we made an examination of a hospital and sent them a report of our findings, we sent also a letter calling attention to the high spots in the inspector's report and at the close of the letter we again cited the Mundt resolution."

Q. What was the result, if you know of any action on the part of the hospitals with reference to the Mundt Resolution?

A. Well, it would be difficult to remember, but I believe one of the hospitals adopted a rule that no one should be appointed to their staff who was not a member of a recognized medical society, and that if there were any members already on the staff they would be given a year in which to become members.

Q. I show you what purports to be a collection of correspondence, Dr. Cutter, I am calling your attention to this and ask if you can identify that correspondence in any way?

A. This is the correspondence we have had with the five hospitals visited by Dr. Peterson, after the visit had been completed and the report of the visit was submitted to them.

The Mundt Resolution was brought to the attention of the hospital only as shown on the correspondence and through the circular letter which was sent out in 1934 (Def. Ex. 14).

On August 27, 1937, in a letter to George Washington

Hospital, after quoting the Mundt Resolution I stated, "Analysis of the staff is included in the report. What possibility, if any, exists for the observance of this recommendation at George Washington Hospital." Columbia was asked, "Analysis of the staff is included in the report. What possibility, if any, exists for the observance of this principle in your hospital?" It was stated to Providence Hospital, "According to our analysis there are six members of your staff who are not affiliated with any of the constituent societies of the AMA" after I had drawn attention to the Mundt Resolution. On August 7, 1937, Georgetown Hospital was asked, "Analysis of the staff is included in the report. What possibility, if any, exists for the observance of this regulation?" . . . Other than what was contained in those letters to the hospitals nothing was sent to any one of them in connection with the Mundt Resolution. The language of the letters referred to has no connection whatever to Group Health. At the time the letters were written to the hospitals I had not heard of Group Health, did not know anything of it, had not read anything about it and had not been told anything about it. The purpose and intent of the questions asked in connection with the Mundt Resolution was to follow the recommendations of the House of Delegates made in 1934.

Q. What has been the policy of the AMA through your Council on medical schools and hospitals with respect to the Mundt resolution, throughout the country?

A. The action taken by the Council was to recommend that the resolution be sent to the hospitals for the purposes of learning what their reaction to it would be.

The AMA has never stricken a hospital off an approved list because it did not put in force the Mundt Resolution and has never withdrawn approval because of the failure of any hospital to adhere to the resolution. As a matter of fact there are very few hospitals on the approved list of the AMA which have exclusively members in such societies on their staffs and the great majority have not observed the Mundt Resolution. The AMA maintains a list of every doctor in the United States with reference to his qualifications and knows whether the hospitals have pursued the recommendation in the Mundt Resolution.

Anything I said or wrote concerning the Mundt Resolution to any hospital in the city of Washington had no con-

nection with Group Health. In my instructions to and my talks with Dr. Peterson, after he made examinations of the Washington hospitals, we did not talk about Group Health. At no time following the examination of the Washington hospitals did I do anything toward the restraint of Group Health or in preventing Group Health staff members from becoming members of the staff of the various Washington hospitals. The only thing I know that the Washington hospitals did about the Mundt Resolution is that "Georgetown took some action with reference to their membership," and I do not know how long the matter of staff membership was considered by Georgetown. The first time I heard of GHA was when I read an article about it in the Journal in October. It has been referred to as the Woodward article. After learning of Group Health I did not do anything to put pressure on a single hospital with reference to the Mundt Resolution.

The only defendants I know are Dr. Woodward, Dr. Christie, Dr. Fishbein, Dr. Groover, Dr. Leland, Dr. West and Dr. Yater. I don't know anybody in the Harris County Medical Society or in the Washington Academy of Surgery. I never attended a meeting of the District Medical Society. The first time I ever heard anything of the records and meetings of the District Medical Society was when I heard them read in court at this trial. The various bureaus of the AMA are quite separate. Most of them are administered by a director responsible to the Board of Trustees. The Council reports directly to the House of Delegates. The Council has three doctors who carry on work of inspection, one man not a physician, who assists in the management of the department and 15 stenographers and is pretty busy most of the time and I have to sign every day 25 to 50 letters, sometimes more.

I never met with Dr. West and Dr. Leland and Dr. Fishbein to discuss Group Health or what the AMA might do with Group Health. The AMA did not do anything concerning Group Health through the Council. I do not know of its having done anything other than the publication of the article in October, 1937.

The Trinity Hospital in Little Rock, Arkansas, is a hospital operated by a group of doctors, who sell not only hospital care but medical care. I wrote Gov. Ex. 248 to Trinity Hospital, as "we were maintaining our Register of Hospitals and information had come to us that doctors

who constituted the staff of this hospital had all resigned from the Medical Society, rather than face charges of misconduct, and we felt that if there was any question about the character of the work they were doing, we would like to investigate it and have some sort of an opinion whether the ground was sufficient to remove them from the Register."

The hospital was on the yearly register and when I wrote the hospital, I was trying to get additional evidence, as information had been received from the county society in Little Rock, and it was in order to get some affirmation or lack of affirmation, if possible, that I wrote to Dr. Scarborough. It was on the receipt of a document dated September 3, 1935, Def. Ex. 17, that I wrote Gov. Ex. 248.

Def. Ex. 17 was received in evidence and read to the jury as follows:

"Memorandum Re Trinity Hospital, Little Rock, Ark.

Dr. M. D. Ogden of Trinity Hospital, Little Rock, was in the office to talk about the hospital in reference to its registration. He said it was true that all of the members of the staff of Trinity Hospital resigned from the Pulaski County Medical Society a few years ago when the Medical Society was preparing to try them for participation in their plan of flat rate practice. He says that they later tried to appeal their case to the Council of the Arkansas Medical Association and the Judicial Council of the American Medical Association with the result that their appeal could not be heard because they were no longer members. He also said that they employed someone to travel around and introduce their plan and sell it, both to groups such as banks and other concerns and also to individuals, and insisted this could not in any sense come under the head of soliciting.

Dated September 3, 1936.

P. S. Dr. Ogden did not appear to have very specific information about the principles of medical ethics and was apparently not well informed on the proceedings of the House of Delegates. It was his impression that the delegates were told what to think. He was supplied the lacking information with regard to these matters.

H. F. S."

H. F. S. is Mr. Sanger in my office who looks after general office management and keeps up the registration. The year

1936 on Def. Ex. 17 is in error. The year 1935 is correct. The following excerpt from Gov. Ex. 248, a letter from Dr. Cutter to Dr. Scarborough, dated Sept. 9, 1935, was read to the jury:

"In order that we may have reliable information on this point, will you be good enough to explain just what is the form of service in which you are engaged? Could you send me samples of your announcements and agreements? Do you employ solicitors to procure clients?"

On September 16, 1935, Trinity Hospital replied, Gov. Ex. 249, to Gov. Ex. 248. I did not have anything whatever to do in my official capacity or otherwise with the resignation of the doctors of Trinity Hospitals from the Pulaski County Medical Society, and prior to the receipt of this information, I did not know that these doctors had resigned from the Society. I did not have anything to do with the attempted appeal by these doctors to the Judicial Council of the AMA and had nothing to do with the Judicial Council in connection with the appeal. My understanding of this jurisdiction of the AMA over the action of a county or state society is "that if any member of the county society takes exception to an action of a county society he may appeal to the State Medical Society, and that State Medical Society may confirm or overrule the decision of the local medical society; and if he is dissatisfied with the decision of the state body, he may then appeal to the Judicial Council of the AMA for a final determination of the question." When I wrote on September 9, I did not have knowledge that these doctors had appealed to the Judicial Council. I didn't know exactly to what Dr. Scarborough referred in the second paragraph of his letter. I had some idea that there had been a controversy, but I did not know what the controversy was or what it was about. I afterwards learned that it was about this appeal he had taken from the County Society to the State Society and from the State Society to the Judicial Council. Dr. Scarborough wrote that the attitude of the AMA "has been so arbitrary, unreasonable and unfair that we feel disinclined to discuss the matter further." On September 23, 1935, I wrote Dr. Scarborough another letter, Gov. Ex. 256, stating "Thank you for your letter of September 16. One of the duties assigned to this Council on Medical Education and Hospitals is to make a register of hospitals accepted by the American Medical Asso-

ciation. I am pleased to send under separate cover a copy of the register with our compliments. I need not tell you the benefits that come to a hospital through recognition in the register and the favorable publicity it is given, since the register is published in every issue of the American Medical Association Directory and in the special Hospital Number of the Journal of the American Medical Association." Most everybody that is interested in the hospitals uses our directory as its source of information; and if a hospital is listed there they can find out something about it and if it is not listed, it is difficult to find it out without personal correspondence. I also sent a copy of the "Essentials of a Registered Hospital" and a copy of the Principles of Medical Ethics of the AMA. I did not receive a reply to my letter supplying me with the explanation I sought.

Q. (Reading further from Gov. Ex. 256):

"Our object in writing to you was to extend to you the privilege of speaking for the hospital and particularly supplying information on those points against which some objections have been made and which practice, if they do exist and if persisted in, would jeopardize the registration of the hospital."

Did you ever receive a reply to that letter?

A. No, sir.

Q. How long did you wait for a reply?

A. Well, the register was published the following month.

Q. Have you any reply from Dr. Scarborough supplying you with any explanation?

A. No, sir.

Q. When was it, then, that that hospital no longer appeared upon the register?

A. In March of 1936.

The Directory appeared in June of 1936 and following its appearance I had further correspondence with Trinity Hospital. On August 11, I received a letter (Gov. Ex. 252) from Caroline P. Snyder, asking why it was that the name of the hospital did not appear in the Medical Directory. I replied, Gov. Ex. 253, to Miss Snyder's letter, stating:

"As stated before, it is my impression that the difficulty is between the physicians who practice in your hospital and organized medicine, particularly the County Medical So-

ciety. It is my understanding that the members of the staff of Trinity Hospital resigned from the Pulaski County Medical Society, later appealing to the Council of the Arkansas Medical Society and to the Judicial Council of the American Medical Association. It is my understanding also that both of these appeals were denied on the ground that the men had already resigned, and therefore, not being members, the Council referred to would not be in position to hear an appeal from them. In this situation it appears to me that the first step should be taken by the physicians referred to.

Regarding other hospitals, including railroad hospitals, the situation is somewhat different, and while it is being dealt with as judiciously as possible, I do not know that a solution of their case would materially affect the situation in which Trinity Hospital finds itself."

The fact that Trinity Hospital was engaged in contract practice was not the reason, but it was to determine whether or not these men had violated the rules of the Medical Society, with reference to the house-to-house solicitation of patients and canvassing for business and other things which had been reported in the memorandum which we had. The AMA has never taken any attitude with reference to contract practice per se, nor has the Council with reference to any hospital that conducts contract practice and there is no policy in force or was in force in 1935 which would cause removal from the register of any hospital engaged in contract practice, or with reference to a physician engaged in contract practice. I have engaged in contract practice and maintained my membership in the AMA.

I wrote Gov. Ex. 232 to the Mt. Sinai Hospital in Milwaukee. At the time I wrote the letter it had come to my attention that certain physicians had been expelled from the Medical Society of Milwaukee through participation in the Milwaukee Medical Center and continued as members of the attending staff of Mt. Sinai Hospital. In Gov. Ex. 232 I called attention to the Mundt Resolution and asked "What possibility, if any, exists for observance of the principle laid down in this resolution?"

I received from the hospital Gov. Ex. 233 in reply, in which the hospital stated in regard to the controversy between the Milwaukee County Medical Society and the Mil-

waukee Medical Center, Mt. Sinai has been forced, because of fear of itself being involved in legal complication, to take the stand that until the matter is adjudicated it is deemed advisable to take no drastic action. I acknowledged receipt of Gov. Ex. 233 (Gov. Ex. 247).

I wrote the hospital again on October 24, 1936, Gov. Ex. 244, stating, "We have been informed that the Council of the Wisconsin State Medical Society has upheld the action of the Milwaukee County Medical Society in expelling certain physicians for unethical behavior. How does this action affect Mt. Sinai Hospital? Are all members of the staff in good standing with the Milwaukee County Medical Society or eligible for membership in that society?"

I did not have personal knowledge or engage in any way in the proceedings by either the Milwaukee County or the Wisconsin State Medical Societies.

Gov. Ex. 245, dated October 30, 1936, is a reply to Gov. Ex. 244, in which the hospital advised, "The situation at Mt. Sinai Hospital is still in status quo." I then wrote Gov. Ex. 234 on November 27, 1936, stating, "We have now received word from all hospitals in Milwaukee concerning the status of the expelled doctors," that the matter will be reviewed by the Council in February and asked if any changes occurred at Mt. Sinai we would be glad to be kept advised. The Council, while the matter was in adjudication, did not take action.

Then I received Gov. Ex. 216, dated October 22, 1937, stating in substance that Dr. Thompson had heard nothing, requesting information, and stating, "We have withheld decision in regard to physicians of the Milwaukee Medical Center pending action by the AMA." On November 3, 1937, I wrote to Dr. Thompson (Gov. Ex. 217) stating that "The matters about which you inquire are still under discussion by the Judicial Council of the AMA," and I would advise him when a decision was reached. On April 6, 1938, Dr. Thompson wrote me (Gov. Ex. 206) inquiring whether or not there was any change in the situation "concerning compulsory county medical society membership on approved voluntary hospital staffs." I think Dr. Thompson, when he used the words "compulsory county medical society membership" was awaiting the decision from the Judicial Council. I do not know what the rule of the Milwaukee County Medical Society was with reference to membership

on staffs of hospitals of Milwaukee County and I was not concerned in any way about it.

On April 13, 1938, I wrote Gov. Ex. 207 stating, "We have recently been informed that the Judicial Council of the AMA has sustained the action of the Milwaukee County Medical Society in the matter of certain physicians recently expelled from society membership. Accordingly, we shall be anxious to know what action Mt. Sinai Hospital is taking." Mt. Sinai was a hospital approved for interne training. On April 15, 1938, Dr. Thompson replied (Gov. Ex. 208) stating that he noted a reference "to the resolution of the House of Delegates pertaining to staff appointments in hospitals approved for interne training" mentioned in my letter of July 17, 1936. He quoted the Mundt Resolution, stating he noted it was referred to the Council on Medical Education and Hospitals, and "we are wondering whether or not the Council on Medical Education and Hospitals has taken any definite stand regarding this matter." The Council has never taken any other stand than that I have already described concerning the Mundt Resolution. Dr. Arestad of my staff replied with Gov. Ex. 211 to Gov. Ex. 208, and that letter "truly expresses the attitude of the Council on Medical Schools and Hospitals" and states:

"May I say, first of all, that the American Medical Association does not have, nor does it assume, legal authority over any hospital, and consequently does not presume to dictate how hospitals should conduct their affairs. If, however, a hospital desires the endorsement of the Council it should be willing to comply with the principles which the American Medical Association considers necessary. One of the basic requirements is that the medical staff should be composed of regular physicians properly qualified as to training, licensure, and ethical standards. When a hospital, therefore, employs physicians expelled from County Medical Society membership on the basis of unethical conduct, it is obvious that the hospital's standing is involved not only from the point of view of interne training, but also as regards basic registration. We are anxious, therefore, to be notified of any action taken by your Executive Board."

On July 14, 1938, I wrote Gov. Ex. 205, as no reply was received to Gov. Ex. 211, stating:

"In view of the fact that we have received no reply to our letter of May 5 and no notification of any action taken with respect to employment of physicians expelled from the County Medical Society, we wish to inform you that we are recommending to the Council that Mt. Sinai Hospital be removed from the approved interne list and also from the register of the American Medical Association."

Following a telephone conversation with Dr. Thompson, I wrote him on July 20, Gov. Ex. 212, stating:

"With reference to your recent telephone inquiry, we wish to state that in our opinion the action taken by the County Medical Society in expelling physicians for unethical practice constitutes a censure of other doctors participating in the same enterprise."

Dr. Thompson replied on July 21, 1938, Gov. Ex. 213, stating:

"This will inform you that on recommendation of the Executive Committee of the Staff of Mt. Sinai Hospital and ratification by the Board of Directors of the Mt. Sinai Hospital, Doctors A. L. Curtin and H. F. Walters were removed from the active staff of Mt. Sinai Hospital and courtesy privileges were withdrawn from these two men in accord with your letter dated July 20th and the telephone conversation had with you on Friday, July 15, 1938."

The last letter received in the matter, dated July 21, was received by the Council, July 22, 1938, and is Gov. Ex. 214:

"To supplement our letter of July 21 and to conform with your letter of July 20 we wish to inform you that Dr. G. H. Oberembt has been removed from the courtesy staff of Mt. Sinai Hospital and courtesy privileges withdrawn."

The other hospitals in Milwaukee dropped the expelled doctors from their staffs and I knew this because we received from each hospital a list of their staff by way of information sent us for maintenance of our register, and in looking over the list found that the names of these men no longer appeared. Those names were not dropped from the staffs in the hospitals in Milwaukee in pursuance of anything which my Council had done. So far as my information is concerned, it was the voluntary act of the hospitals

themselves in Milwaukee; Mt. Sinai was the only hospital in Milwaukee which retained the five expelled doctors on its staff.

I had no personal knowledge concerning the charges upon which the doctors had been disciplined in their medical society and that had nothing whatsoever to do with the Judicial Council or with the Mundt Resolution. I have no authority alone to act with reference to registrations on the hospital register, and that authority lies with the Council, and, before any action could be taken with reference to Mt. Sinai Hospital, the Council would have to adopt a resolution. The Mundt Resolution was not drawn to the attention of the other hospitals in Washington, D. C., which were not examined in 1937. Sometime prior to December 1, 1936, there had been an examination of the General Hospital of Rochester, New York. On December 1, 1936, the usual thing occurred and a letter was written the Rochester Hospital, Gov. Ex. 246, expressing "the attitude of the Council toward the Mundt Resolution," stating, "We wrote you on September 8 calling your attention to a recent resolution passed by the House of Delegates of the AMA." (Then follows the text of the Mundt Resolution.) "We are anxious to learn from approved hospitals as to whether they are in general agreement with the principle laid down in the Resolution and would be pleased to have your comments in the matter."

In reply Dr. Parnall of Rochester wrote (Gov. Ex. 254) on December 17, 1936, stating, referring to the Mundt Resolution, that he was in a quandary as to what to say as he personally felt members of hospital staffs should be members of their local societies, but he did not believe in any inflexible rule. He further wrote that he "suggested to our Board of Directors a change in the by-laws . . . requiring . . . unless otherwise voted . . . no physician would be eligible unless he is a member in good standing of the County Medical Society. When this proposal was referred to the Medical Board for an opinion I was rather surprised to find that its members, all members of the County Medical Society, were unanimously against it. Their feeling was that the County Medical Society should stand on its own merits and that it should offer enough of itself so that practically every member of a hospital staff should seek membership and that anything that savored of compulsion would subject medicine to the

same thing that arouses the resentment of doctors to the actions and attitudes of non-medical organizations." It was pointed out that only a small percentage of the staff were not members of the county society and that most of this group were younger men most of whom will shortly join the medical society.

Dr. Parnall then wrote that ten members or eight per cent of the staff were not members of the county society and stated:

"Even of the honorary inactive staff of 7 members, all but one being over 75 years of age, there is only one who is not a member of the County Society. The only two who are not members of the County Society are the Professor of Bacteriology at the University and a bacteriologist who is not an M. D. Our staff represents practically one-fourth of the active membership in the County Society. In this membership are the president of the New York State Medical Society, the president, the president-elect, and the secretary of the Medical Society of the County of Monroe. I personally have been a member of the American Medical Association continuously for over thirty years and two of my sons are members of County Societies. Under the circumstances, as far as control of organized medicine is concerned, could the House of Delegates very well hold that the Rochester General is an unfit place for the training of internes?"

When I and the Council were advised that there were ten members upon the staff of the General Hospital of Rochester who were not members of the local medical society, no action at all was taken to compel the hospital to adopt the Mundt Resolution. Neither the Council nor I have ever taken any compulsory proceedings against any hospital in the United States on the Mundt Resolution.

The correspondence with the Rochester Hospital was closed by a letter (Gov. Ex. 255) from my office dated December 21, 1936, stating:

"In response to your letter of December 17 let me express my appreciation of your information and your comments on the affiliation of your staff members with your medical society.

"The intention behind the resolution was to smoke out from the staffs of some hospitals certain men who were

regarded as objectionable and whom the hospitals felt a delicacy in removing. I notice that your staff enjoys a very favorable position in regard to the support of your professional organization, and that apparently any object which the Council might have had in view has already been anticipated."

No action was ever taken by the Council with reference to the Rochester General Hospital because of the fact that it had non-members on its staff.

Cross-examination.

By Mr. Lewin:

I am employed on a full-time basis with the AMA and have been since December 1, 1931, and am compensated by "a salary paid monthly." At one time I was engaged in contract practice. From 1906 to 1910 I was employed to look after the employees of the Copper Queen Consolidated Mining Company and was compensated "partly by salary and partly by fees from private practice."

Q. But you were actually rendering medical service to employees and being paid for it by salary?

A. Yes, sir.

Q. Did you regard that connection or salary as unethical practice on your part?

A. No, sir.

Q. Was it ever challenged as being unethical?

A. No, sir.

Q. Did you have any other contract to practice during your career except that?

A. No, sir.

Q. Were you ever a physician for a railroad?

A. I was a physician for a railroad for about one year.

Q. Which railroad?

A. New York Central.

Q. What was your arrangement with the New York Central?

A. I had no compensation except an annual pass.

Q. Was the taking of that emolument for your service regarded as unethical practice?

A. No, sir.

Q. Was it ever challenged on that ground?

A. No, sir.

Q. When you worked for the mining company on a salary and rendered medical service to the employees, would it be fair to characterize that as selling your professional service for resale to those employees?

A. Well, I don't know whether it would be applicable or not.

Q. You remember that characterization that your colleague, Dr. Woodward, put upon Group Health Association doctors, do you not?

A. I can recall it now.

Q. As a matter of fact, might not your employment with that mining company be so characterized?

A. I am not sure whether it could or not. The employees paid a certain fee which the company collected and paid us out of that. Whether they acted as a resale agent or not I could not tell you.

Q. So your thought would be that that sale of medical services for resale is not unethical; is that right?

A. I would agree that all forms of contract practice are not necessarily unethical.

Q. Would you say that the approval which the AMA gives hospitals for the teaching of residents is a valuable thing to the hospital who gets such approval?

A. Yes.

Q. Would you say it was extremely valuable to the hospital?

A. No.

Q. Would you say that the approval of the AMA for interne training was valuable to the hospital?

A. Yes.

Q. Would you say that was extremely valuable?

A. No.

Q. Not extremely valuable?

A. No.

Q. Would you say that registration of hospitals was valuable to the hospitals?

A. Yes.

Q. In what way is registration valuable to a hospital?

A. It simply means that people who want to get information about a hospital can get it by turning to our register.

Q. People are more likely to go to a registered hospital than to an unregistered one?

A. Probably.

Q. And therefore the hospital is likely to enjoy more business?

A. Yes.

Q. And get more income from the patients who take its service?

A. Probably.

Q. What is the value of the approval of a hospital for internship?

A. It is this, that if the hospital is known to render a good course of instruction to its internes by reason of its being on our list, it is easy to get internes. Good internes will apply; and they will accept internship in those hospitals without any compensation other than their maintenance. If they are not getting good instruction they would have to be paid in cash.

Q. Any hospital has a substantial financial interest in getting approval for interne training from you and your council?

A. Well, it is a financial interest but not a very big one.

Q. Well, it would mean without your approval it would have to employ house doctors on salary, wouldn't it?

A. Yes.

Q. But with your approval it is able to attract bright medical students to work for very little?

A. Quite so.

Q. And in return these internes would perform a valuable service to the hospital, would they not?

A. Yes.

Q. Now, does the hospital get anything by way of prestige in obtaining approval for internes from you?

A. Well, that is a rather indefinite quality. It doesn't do them any harm.

Q. No. And conversely, a hospital which loses your approval suffers substantially in prestige, doesn't it, wouldn't you say?

A. Not necessarily. There are too many good hospitals that don't have our approval to make that true.

Q. Yes, but if a hospital once has your approval and then you withdraw it, doesn't that bring about a loss of prestige?

A. Not necessarily.

Q. But wouldn't it give that hospital something of a black eye?

A. No. May I illustrate that?

Q. Yes.

A. The hospitals of the United States Army have frequently been approved for the training of internes. Sometimes when they haven't appropriations for internes we have to withdraw our approval simply because they are not hiring internes, and that doesn't affect their prestige in any way, shape or manner.

Q. It depends on the grounds for which the approval is withdrawn?

A. Yes.

Q. But if the approval is withdrawn because the American Medical Association chooses to characterize some of the members of the hospital staffs as unethical, you would say that would give it a black eye, would it not?

A. No, I wouldn't say so.

Q. You wouldn't?

A. No, sir.

Q. Well, on what do you think the withdrawal of approval would affect the prestige of the hospital?

A. Well, if the hospital was not giving good service to its patients then it would affect the prestige of that institution, the withdrawal of the approval of the American Medical Association and its council, for if that has any validity at all, it is based on the confidence of the public, and that confidence is built on the fact that it is based on the public interest.

Q. Well, don't you think the public might stop with the word "unethical", and not look behind it to see what you gentlemen meant by that term, and suppose there is some moral wrong?

A. Well, the reasons for withdrawal are not published, so the public wouldn't have any knowledge of that.

Q. The medical profession would have knowledge, wouldn't it?

A. No, sir.

Q. Wouldn't you say Mt. Sinai Hospital would have received a loss of prestige because they had these doctors who were expelled from the Milwaukee County Medical Society?

A. Well, I don't think it would have.

Q. You don't think it would have suffered any loss of prestige?

A. No, sir.

Q. Didn't you have an article in the American Medical Association Journal entitled "Hospital Service in the United States", published March 11th, 1939?

A. Yes, sir.

Q. And in that article didn't you say "It is considered a disgrace among hospitals to be refused registration, and institutions that are rejected are frequently aroused". Did you say that?

A. I don't remember saying it, but if it is in that article—

Q. Is it true? Is it true that loss of registration might well be regarded as a disgrace for the hospital?

A. That is a refusal of registration.

Q. All right. Would the same thing apply to withdrawal?

A. Well, it would depend upon the grounds upon which the withdrawal was based.

Q. Suppose the grounds are not known. You see, the public doesn't usually know the grounds. Might it not assume there was really some valid moral grounds for withdrawing this approval?

A. Well, I think that the public would probably assume that there was some reason.

Q. As a matter of fact don't you know, Dr. Cutter, that most of the hospitals desire your registration and your approval for interne training and for residencies very much indeed?

A. I think that is true.

Q. Do you remember the letter you got from Sister Rodriguez here in Washington saying that withdrawal of the approval for interne training school would be a dire catastrophe?

A. I think she over-stated the case.

Q. Well, you have, in general, in the minds of hospital superintendents, that thought, don't you?

A. Well, I don't think it is as strong as that.

Q. By reason of your power—and I am speaking now of the power of your Council to withdraw this registration, these approvals, you are able to get the hospitals to do certain things, are you not?

A. Well, as long as the things we ask them to do are reasonable.

Q. For instance, you were able, were you not, to get the Mt. Sinai Hospital to deny courtesy staff privileges to a group of doctors. Is that right?

A. That is what they did.

Q. And you got that easily by invoking the Mundt Resolution, did you not?

A. No, not by the Mundt Resolution.

Q. Didn't your first letter to Mt. Sinai Hospital approach the problem on that basis?

A. The first letter did. The first letter did. But the final letter which told them they would be recommended for withdrawal was based on the essentials for a registered hospital.

Q. Isn't it true that your Council had a meeting on February 13, 1937, at which you were present, and at which this Mt. Sinai approval was discussed, and isn't it true that at that meeting the following occurred? (Gov. Ex. 638):

"Members of the staff expelled from Medical Society of Milwaukee County on charge of running an unethical clinic. Order expelling appellants from membership confined by the Wisconsin State Medical Society.

"If an appeal has been made to the Judicial Council, it was recommended that action regarding the removal of Mt. Sinai Hospital from the list of hospitals approved for intern training be withheld pending decision by Judicial Council.

"If no appeal has been made, the Secretary was instructed to write the hospital advising approval would be withdrawn unless they conform to the requirement regarding staff membership."

Is that what transpired?

A. It is.

Q. And didn't you have in mind the requirements of the Mundt Resolution?

A. No, we had in mind the requirements for registered hospitals.

Q. Well, this is approval for interne training, is it?

A. Approval for interne training is automatically removed if a hospital is off the register.

Q. But didn't the Mundt Resolution lay down as an approval for interne training that very thing?

A. No, it did not. It stated it should take/in under advisement.

Q. And didn't you so construe that?

A. We construed it meant we should encourage hospitals to follow that spirit of the resolution.

Q. And you did embark on a practice of trying to get the hospitals to conform to that resolution?

A. We embarked on a practice of sending that to the hospitals for their approval.

Q. And if they didn't answer it you followed it up and still demanded to know what they were going to do about it?

A. We followed it up and asked them what they were going to do about it.

Q. And when they denied it, you followed it up with withdrawal of approval, didn't you?

A. No, sir.

Q. That is what you did in the Milwaukee case, wasn't it?

A. There was a different factor involved there.

Q. You followed the proceedings of the local Council in that Curtin case, didn't you?

A. I didn't follow the proceedings of the local Council at all.

Q. Wasn't this your letter of April, 1938, to Mt. Sinai Hospital (Gov. Ex. 207):

"We have been informed as to the action of the Milwaukee Society in the matter of certain physicians recently expelled from Society membership.

"Accordingly we shall be anxious to know what action Mt. Sinai Hospital is taking in respect to the resolution of the House of Delegates pertaining to staff appointments for hospitals approved for interne training."

Is that your letter?

A. Yes, sir.

Q. Did you mean the Mundt Resolution in that second paragraph?

A. That referred to the resolution, but the action wasn't taken on that basis.

Q. The action was taken two months later, wasn't it, and was to withdraw the approval for interne training?

A. Yes, sir.

Q. Didn't you know this, didn't you know that those Mt. Sinai doctors had been expelled solely because they were associated with this Milwaukee Medical Center?

A. I knew it was some such reason as that.

Q. Well, now, you must have followed the proceedings. Haven't you?

A. No.

Q. Haven't you seen this appeal to the Judicial Council on the grounds on which those doctors have been expelled?

A. No, I never saw that.

Q. In other words, it didn't make any difference to you on what grounds?

A. It didn't make any difference to me if the Judicial Council affirmed the decision. That is all we were interested in.

Q. No matter what grounds were used or what findings, if the AMA expelled them, then it was your duty to smoke them out of the hospitals?

A. We weren't in position to make investigations and we had to accept the decisions of our own Judicial Council as true.

Q. Isn't my statement true, no matter what the grounds were, once they were expelled by the local Societies and that had been affirmed on appeal or no appeal had been taken, then it was your practice to invoke the Mundt Resolution and smoke them out of the hospital staffs?

A. It was our practice to invoke the essentials of a registered hospital, to inform the hospitals that they wouldn't be registered if those men continued on the staff.

Q. Didn't you tell Dr. Parnall the purpose of the Mundt Resolution was to smoke out from the staffs certain men who were objectionable?

A. That letter went out from my office, but I didn't write it.

Q. Aren't those your initials?

A. Those are my initials, but a good many letters were written there that I didn't see.

Q. Don't you understand by that letter that that was the purpose?

A. Well, yes.

Q. Your Council stated it was the purpose?

A. No.

Q. You repudiate the statements then, do you?

A. Yes. As the principle of the Council, I would.

Q. Who was it that wrote that letter, do you know?

A. Well, I can't say.

Q. But you were certainly given responsibility for it. Do you permit them to put your initials on it when you don't dictate the letter?

A. We did that regularly.

Q. Somebody was authorized to write that letter, weren't they?

A. Somebody wrote it.

Q. Did you ever countermand that statement?

A. No, sir.

Q. Did you ever write to Dr. Parnall and say you were wrong in that second paragraph?

A. No, because I had no knowledge of the letter.

Q. This copy was retained in your files, wasn't it?

A. Yes, sir.

Q. Let me show you Exhibit 207 and call your attention to the dictation initials.

You see on the bottom of that "W. D. C.", which are your initials, are they not?

A. Yes.

Q. "K. H." are the initials of the stenographer. And "F. H. A." below that, those are the initials of the writer, are they not? And wasn't it the custom in your office for the writer to put his initials on below yours?

A. No, it wasn't the custom. One or two of the girls did it that way.

Q. There is another one with "C. M. P." below yours. I am referring to 217.

A. Yes, sir.

Q. But on this one that was sent to Dr. Parnall which is written in the first person, no such designation appears.

A. Well, it still remains true that I didn't dictate that letter.

Q. You signed it, though, didn't you?

A. I am not sure of that. I may have.

Q. And if you signed it, no doubt you read it over?

A. Well, not always.

Q. Well, as a matter of fact you did employ the Mundt Resolution in the Mt. Sinai Hospital instance to smoke out Dr. Curtin and these other doctors who had been expelled from the Milwaukee Society because they were connected with a prepayment clinic, and only because of that, off of the courtesy staff of the Mt. Sinai Hospital. Is that right?

A. No, sir. We relied upon the essentials of the registered hospitals when we recommended the action on that case.

Q. And doesn't this correspondence with Mt. Sinai Hospital show very clearly that you succeeded finally after that long correspondence in getting them to let Dr. Curtin and Dr. Ruth and these other doctors go?

A. Well, it shows they did let them go.

Q. And don't you think you had something to do with it?

A. Possibly.

Q. And don't you think you were carrying out the Mundt Resolution when you did it?

A. I don't think we were basing it on the Mundt Resolution.

Q. Now, was there any other agency that rated hospitals for intern training?

A. Not for intern training, no, sir.

Q. The AMA is the sole agency that does that in this country?

A. Yes.

Q. Now, isn't it true that you gave instructions to Dr. Peterson to inspect the five Washington hospitals after you received the letter from Major General Ireland calling attention to the H. O. L. C. medical service plan?

A. No, sir.

Q. When did you first give Dr. Peterson his instructions?

A. I didn't give Dr. Peterson any instructions at all. I simply filed with him the applications we had received.

Q. Doesn't Dr. Peterson work subject to your general directions?

A. Subject to my general directions he does, but he had practical control with respect to intern training in hospitals, and residencies.

Q. Isn't it true that you wrote him to inspect these five hospitals after you got a letter from General Ireland?

A. No.

Q. Didn't you testify that you first embarked on this program June 11th, 1937?

A. No.

Q. When did you first embark on this program?

A. I think the first was February 10th concerning these cases in which approval was wanted.

Q. When did he first come to Washington that year to inspect these four hospitals.

A. The 11th of June, 1937.

Q. And that was a few months after you received the Ireland letter?

A. It was.

Q. And although the Ireland letter did not call specific attention to name Group Health Association, there was no doubt what the gentlemen meant, from reading it?

A. Well, his letter was so brief and vague it didn't make clear what he was talking about.

Q. Is this vague (Gov. Ex. 295):

"The early part of the week a couple of men from the Home Owners' Loan Corporation visited the Surgeon General of the Army to say that they wanted to obtain the services of a doctor to look out for the health of their personnel, which incidentally is quite large. After the consultation, the Surgeon General asked Colonel Glenn Jones, a retired medical officer, to visit these people. After this visit which lasted for a period of two or three hours, Jones telephoned to the Surgeon General to the effect that this was nothing but an entering wedge to the establishment of state medicine and so far as he could make out the Twentieth Century Finance Corporation of New York City was going to pay the expenses of this so-called medical care for the personnel of the HOLC. Needless to say, Jones and the Surgeon General are dropping it like a hot cake."

Now, you had all that information when Peterson came to Washington to inspect these five hospitals?

A. Yes.

Q. And you thought enough of it to send copies of it to your colleague Dr. Woodward who was head of one Bureau and Dr. Leland who was the head of another Bureau?

A. Yes.

Q. And you read the letter and knew the facts contained therein?

A. Yes, sir.

Q. And isn't it true also that Peterson reported with regard to these five hospitals that these hospitals had on their staffs members who were not members of the AMA?

A. That is true.

Q. And so far as his report is concerned, it had been their practice to have doctors on their staffs who were not members of the District Medical Society, the local Society, of the AMA?

A. Yes.

Q. And you had read the reports and noted that fact because it was on that fact you called the attention of those hospitals to the Mundt Resolution. Isn't that so?

A. Well, those letters calling attention to the Mundt Resolution were letters that were written in a routine manner by Dr. Peterson, and he always tacked on that reference to the Mundt Resolution.

Q. You always called attention to the Mundt Resolution when you found as a matter of fact that a hospital was not complying with the policy of the Mundt Resolution?

A. Yes, sir.

Q. And your purpose of tacking it on was to call the hospital's attention to it, wasn't it?

A. Certainly.

Q. In the hope you could get the hospital to comply with the Mundt Resolution?

A. To whatever extent it might be practicable.

Q. And if it didn't comply then it would mean—it would deny courtesy staff privileges to any doctor, no matter how good a doctor he was, unless he joined up with your Society. Isn't that right?

A. No, sir.

Q. Why isn't it right?

A. Because the resolution does not anywhere state that every single member on the staff should be a member of the Society.

Q. Well, doesn't it say that it is the opinion of the House of Delegates that physicians, plural, on the staffs of hospitals approved for intern training by the Council of Medical Education in Hospitals should be limited to members in good standing of their local county Medical Societies? It says that, doesn't it?

A. Yes, but it goes on and says something else.

Q. And that House of Delegates likewise requests the Council of Medical Education to take this under advisement?

A. Yes.

Q. Well, it was the policy then?

A. It was merely a statement of opinion.

Q. All right. It was a statement of opinion then, if you want to call it that, that the entire staff, the active staff and the courtesy staff of all these hospitals should be limited to members of your Society. Isn't that right?

A. That is what the opinion of the House of Delegates was.

Q. And when you tried to get compliance with that opinion, it meant you were trying to get the hospitals to limit their entire staffs to members of your Society, and to kick off of those staffs perfectly good, sound, ethical, upstanding, skillful, doctors who didn't want to join your Society.

Isn't that right?

A. No, sir.

Q. And as a matter of fact isn't it true that as a result of your letters to those five hospitals in the summer of 1937

you did get those five hospitals substantially to promise you compliance with that restriction?

A. No, sir.

Q. All right. Let us see if you didn't.

Q. Dr. Cutter, I have had the opportunity of looking at the record of yesterday's proceedings, and I find that in response to questions from Mr. Leahy you testified as follows concerning the action which you or your council took with regard to the other hospitals in Milwaukee after you learned that those doctors headed by Dr. Curtin had been expelled from the local AMA society in Milwaukee because of their connection with a prepayment clinic. • • •

With regard to those doctors you were asked:

"Were those names dropped from the staffs of the other hospitals in Milwaukee in pursuance of anything which your council had done?"

And you answered:

"Answer. No, sir."

Did you mean by that to say that you did nothing with regard to those other hospitals calculated to bring about their being dropped by those other hospitals?

The defendants interposed their objection to this line of questioning on the ground that it was improper because there was no evidence in the case that the clinic in Milwaukee was a pre-payment clinic. This objection was overruled and exception noted.

A. No, sir.

Q. That is your testimony?

A. Yes.

Q. And you were asked:

"Question. So far as your information is concerned, it was the voluntary act of the hospitals themselves in Milwaukee?"

And your answer:

"Answer. So far as we knew."

Did you mean by that to testify that you knew of nothing which you did which might have influenced the governing bodies of those other hospitals in dropping those expelled doctors?

A. Yes.

Q. And you were asked:

"What was the only hospital in Milwaukee which retained the five expelled members on its staff?"

And you answered:

"Mt. Sinai."

And:

"Did you yourself have any personal knowledge with reference to the charges or anything of that sort upon which the doctors had been disciplined in their own medical society?"

And you answered:

"Answer. No, sir."

Did you mean by that answer to say that you did not have access to the proceedings of the Judicial Council: Didn't you have the records of the Judicial Council before you?

A. I could have if I sought it, but I had no occasion for doing it and I did not seek it.

Q. As a matter of fact, wasn't the opinion of the Judicial Council immediately transmitted to you?

A. It was merely a memorandum stating that the Judicial Council had upheld the action of the local society and the state society, but the reasons for that were not given.

Q. Didn't that memorandum in your office contain the opinion of the Judicial Council?

A. No, only that paragraph that stated the action taken on these doctors who had been expelled was approved.

Q. Didn't you know that these doctors had been expelled and their expulsion confirmed on the ground that they were connected with a prepayment clinic in Milwaukee?

A. I knew they were expelled from their society through participation in an organization deemed to be engaged in unethical practice; what the basis of its operation was I did not know.

Q. And as a matter of fact, Doctor, I believe you testified that it would not influence your action in regard to Mt. Sinai, whatever the case had been for the expulsion of doctors, is that correct?

A. That is correct.

Q. If they had been expelled merely because they were connected with a prepayment clinic you would nevertheless have done what you did with reference to Mt. Sinai?

A. We could not go behind the findings of the Judicial Council.

Q. Now, let us see if I understand you. If the doctors who were expelled were perfectly skillful, able, professional men, that would not have influenced you with reference to your action at Mt. Sinai?

A. I can only repeat: We could not go behind the decision of the Judicial Council.

Q. Did you know anything against these men in their professional standing in the community in which they practiced?

A. I was aware of the fact that they had been expelled from their local organization.

Q. You knew nothing about their skill or professional ability?

A. No, sir.

Q. Nothing about their morals?

A. No, sir.

Q. Knew nothing about their professional relations with their patients?

A. No, sir.

Q. So far as you knew they were perfectly able, fine doctors, as good as yourself?

A. No, sir.

Q. Then you were asked this by Mr. Leahy:

"Did that have anything whatsoever to do,"—speaking of your action with the hospitals—"the action on your part or on the part of the Judicial Council, with the Mundt Resolution?"

And you answered:

"Answer. No, sir."

Q. Now, did you mean by that that the action which you took with reference to Mt. Sinai was not based on the Mundt Resolution?

A. Precisely.

Q. Did you have any other authorization from the House of Delegates to tamper with the staffs of hospitals except the Mundt Resolution?

A. Yes.

Q. What was that authority?

A. The one authorizing the registry of hospitals, which was approved by the House of Delegates and which stated the staff of any hospital that was registered should be controlled by ethical physicians.

Q. And you took that to mean that the staffs of hospitals must be limited to those people that the American Medical Association calls ethical?

A. We took it to mean that it should be limited to those against whom there were no charges of unethical practice.

Q. And by "unethical practice" you took it to mean any charges the American Medical Association might bring and your Judicial Council might approve against any doctor?

A. Yes.

Q. And it was on that authority and under the Mundt Resolution that you proceeded against Mt. Sinai?

A. Yes.

Mr. Leahy: We object. He has just denied that the Mundt Resolution was the basis for the action, and now Mr. Lewin has incorporated and added the Mundt Resolution to this other. He said he invoked the registered hospitals regulations which had been adopted by the House of Delegates. Now you ask him if it wasn't on the basis of that and the Mundt Resolution.

The Court: He said one of the letters had been based on the Mundt Resolution.

Objection overruled and exception noted.

Q. But at any rate, acting for the American Medical Association, you did try to induce the Mt. Sinai Hospital to kick these doctors off its staff, didn't you?

A. I wouldn't say that. If you will read the letter of Dr. Arestad dated May 5, introduced in evidence yesterday, I think you will get a very clear statement of the Council's disposition.

Q. Didn't you take the same kind of action that you took toward Mt. Sinai with the other hospitals in Milwaukee?

A. No, sir.

Q. Now, I ask you, did you know Mr. Theodore Wiprud?

A. I knew who he was.

Q. Isn't he the executive secretary of the District Medical Society?

A. Yes.

Q. Before that wasn't he the executive secretary of the Milwaukee society?

A. Yes.

Q. Didn't you have authority to write to Mr. Wiprud in regard to these doctors being on the staff of these hospitals in Milwaukee?

A. Yes; I think such a letter was sent.

Q. Didn't you write (Gov. Ex. 619 dated July 2, 1936):

"I should like to inquire (1) what are the names of the physicians who were recently expelled from your county Medical Society because of their connection with an organization fostering unethical practice, (2) have they made any appeal to the County Medical Society, (3) when was the action taken against them and how much time do they have in which they may make an appeal, (4) are they all, or any of them, and which ones, engaged in active service on the staff of either of the Milwaukee County hospitals.

"I would like details in this connection."

A. I think that letter was sent from my office.

Q. Didn't you want that information from Mr. Wiprud so you could approach the other Milwaukee hospitals in the same way as you had approached Mt. Sinai?

A. We wanted the information and got it, but we didn't approach the other hospitals.

Q. Didn't you seek that information so that you would be in a position to approach the other hospitals if they had retained these physicians on their staff?

A. We might have.

Q. And if you had used it that way you would be using it to kick those doctors off those staffs, would you not?

A. That is not a fair statement.

Q. You would have used it to induce those hospitals who were free, independent, private hospitals; free agencies, to take those doctors off their staff list under an implied threat that if they didn't you would withdraw their registration approval?

A. We stated in the letter to which I just referred that we did not pretend to tell any hospital, but if they voluntarily asked for the Council's approval they should be willing to follow the recommendation of the Council.

Q. But, as a matter of fact, didn't you want to interfere with them and bring about the situation in Milwaukee where those doctors, for some reason which you say you do not

know could not go into any of the private hospitals in Milwaukee?

A. We didn't wish to bring about such a situation as that.

Q. Didn't you want to bring about a situation where none of those doctors so expelled could go into any one of the registered hospitals in Milwaukee to practice their profession?

A. No, sir.

Q. Didn't you want to induce those hospitals, if they had retained them on their staffs up to that time, to expel them from their staffs?

A. No, sir.

Q. Why did you want this information you asked of Wiprud, then?

A. Because we wanted to know whether we should grant approval to those hospitals.

Q. In other words, you were prepared to withdraw approval of any hospital which continued with these doctors?

A. Yes.

Q. But if they got rid of them you would continue your approval of such institutions?

A. Yes.

Q. Do you call that smoking out doctors from the staffs of those hospitals or not?

A. No.

Q. Is this not the answer you got from Mr. Wiprud: I show you a photostatic copy of a letter dated July 3, 1936, and ask you if this is not his reply (handing Gov. Ex. 620 to witness). This is in response to your letter?

A. I think so.

Q. Does that contain the information which you sought?

A. Yes.

Mr. Lewin (Reading):

"DEAR DR. CUTTER:

I am pleased to reply to your letter of July the second, inquiring about the physicians recently expelled from the Society.

(1) The doctors expelled for participating in what is known as the 'Milwaukee Medical Center' are:

A. L. Curtin

H. C. Dallwig

J. E. Rueth

G. A. Sullivan
H. F. Wolters.

"(2) They were expelled after several hearings before the Board of Directors of this Society. Their counsel made an appeal to the Council of the State Medical Society, which was heard last week.

"No action was taken because of the necessity of the individual members of the Council reading some 800 pages of testimony covering the hearings held here.

"(3) The action against these men was begun by this Society on February 15, 1936, at a special meeting of our Board of Directors. Charges were preferred against the first three men on March 20, 1936, and they were given until March 27th to file their answers, and were heard on March 30th. Action against Dr. G. A. Sullivan was begun on March 2nd, 1936, and charges against him were heard on April 25th, 1936. Action against Dr. H. F. Wolters was begun at the meeting of our Board of Directors on April 28, 1936; Charges were preferred against him on June 3rd, and he was heard on June 5th, 1936.

"(4) Some of the hospitals in Milwaukee County require that all physicians doing work in their institutions, regardless of whether they are staff members, must hold membership in the Medical Society. Others require that only members of their regular staffs be members of the Society.

"We understand that those physicians participating in the so-called Medical Center are at present working in St. Luke's, Mount Sinai, and Misericordia Hospitals. We have notified these hospitals that these doctors are no longer members of the Society. In the instance of Mount Sinai, we have been informed that if the American Medical Association takes the position that the hospital will not be recognized for intern training they will not allow these physicians to continue working there.

"We have been advised that St. Joseph's Hospital has notified these men that they can no longer work there after July 15th because they are not members of the Medical Society.

"May I suggest, Dr. Cutter, that you have a talk with Dr. Rock Sleyster relative to this situation? He is entirely familiar with it. He sat in on one of our Board meetings when these men were first talked to about their project, and he heard the appeal to the State Society, also.

"Naturally, our Board is anxious that your Council support its stand against these physicians because of their unethical conduct."

Q. Now, he wanted support for his stand and weren't you willing to give him support along those lines?

A. We stated to him what the policy of the Council would be.

Q. By the way, opposite the names of these doctors on that letter appear certain items in handwriting. You see after the name "Dr. Curtin" you have the name "Misericordia, Attending Surgical Staff, Mt. Sinai." That shows he was still on the staff of those hospitals in Milwaukee?

A. Yes.

Q. After Dr. Wolters you have "Attending Staff, Mt. Sinai"?

A. Yes.

Q. And then some of the other doctors' affiliations you have indicated?

A. Yes.

Q. Who wrote those notes: Were they done in your office?

A. I do not know.

Q. In other words, wouldn't it be the duty of your office to check to see which ones of these doctors were connected with the Milwaukee hospitals?

A. They may have done that.

Q. Wouldn't that be the natural thing? Wouldn't they have done that preparatory to your taking action in regard to the hospitals on whose staffs they appear?

A. They might have done so.

Q. Didn't you write to Wiprud on July 9, 1936 (Gov. Ex. 621), thanking him for the information and saying that the Council on Medical Education and Hospitals "will, without question, adhere to the instructions of the House of Delegates in requiring that hospitals approved for intern training have on the staff only physicians that are members of the county medical society"? Didn't you say that?

A. I don't remember.

Q. Isn't this a copy of the letter?

A. I think it is.

Q. And in the paragraph I have read weren't you talking about the Mundt Resolution and not about registration?

A. About both of them.

Q. Weren't you talking about intern training?

A. Yes.

Q. Wasn't the Mundt Resolution directed to that?

A. That approval for such training was contingent upon registration.

Q. You weren't invoking the Mundt Resolution up to this point, at any rate?

A. Both of them.

Q. Not alone this registration restriction?

A. That is right.

Q. Did you say this, also:

"My impression is that the Council's action regarding Milwaukee hospitals should be held in abeyance pending the outcome of the appeal of the expelled physicians-mentioned in your letter"?

A. Yes.

Q. Were you talking about the other hospitals in addition to Mt. Sinai?

A. Any hospital.

Q. In other words you were preparing your guns for the other hospitals as well as Mt. Sinai?

A. That refers to any hospital that might be involved.

Q. Misericordia, St. Luke's, St. Joseph's, the Passavant and the rest of the hospitals, in addition to Mt. Sinai?

A. Provided they continued to keep on their staffs men who were found by the Council to be guilty of unethical practice.

Q. Did you write this letter of July 17, 1936, to Dr. Rock Sleyster (banning Gov. Ex. 622 to witness)?

A. I think so.

Q. Didn't you say in that letter:

"I am enclosing a copy of a letter which is being sent to St. Luke's, Mount Sinai, and Misericordia Hospitals, following receipt of your recent communication.

"We have used this same method with respect to quite a number of hospitals and the response has, in almost all instances, been completely satisfactory.

"We might add that in view of the monumental task associated with analyses of staffs, we have started by concentrating on the attending or voting staff, with the hope that when that situation is cleared up we can turn our attention to junior and courtesy groupings.

"Such results as we obtain through this and other methods will be communicated to you as promptly as possible."

Wasn't that Dr. Sleyster the gentleman whom Mr. Wiprud asked you to communicate with in regard to the Curtin case?

A. Yes.

Q. And hadn't he written you with regard to the status of the other Milwaukee hospitals?

A. I presume this refers to some of the others.

Q. On that basis?

A. Yes.

Q. And didn't you enclose this in your letter to Dr. Sleyster, which was the letter you said you were going to send to those other hospitals, as well as Mt. Sinai?

A. Yes.

Q. And didn't you send this letter to the other hospitals as well as Mt. Sinai?

A. I suppose so.

Q. Is this changing your testimony a little from what you gave yesterday?

A. Yes.

Q. This letter (Gov. Ex. 623 dated July 18, 1936), which is a form letter, reads: (reading)

"It has come to our attention, through correspondence with the Medical Society of Milwaukee County, that certain physicians have been expelled from that society through participation in an organization known as 'Milwaukee Medical Center.' It is also reported that certain of these same individuals continue as members of your attending staff with hospital privileges.

May we call your attention to the recent resolution passed by the House of Delegates of the American Medical Association, as follows: "

Q. And then don't you quote the Mundt Resolution? And then don't you follow that up with:

"What possibility, if any, exists for observance of the principle laid down in this resolution?"

Did you say that?

A. Yes.

Q. Is it your testimony, then, that up to this point, with regard to these doctors, you were invoking the Mundt Resolution not only against Mt. Sinai but against the other hospitals in Milwaukee?

A. Yes.

Q. And you were going to do that because "this method had worked well in a great many other cases"?

A. Yes.

Q. And that by doing so you were thus able to get hospitals to kick off doctors from their staffs and confine themselves to those doctors whom your society, for any reason, chose or was willing to permit to remain as members of such staff?

A. Yes.

Q. To confine staffs to those whom the American Medical Society was willing should remain?

A. If the hospitals wished to have our approval.

Q. Here is a letter (Gov. Ex. 232) already in evidence to Mt. Sinai; it conforms to the letter I have just read?

A. Yes.

Q. And here is Dr. Thompson's reply, is it not; which was already in evidence (Gov. Ex. 233)?

A. Yes.

Q. Is this the letter (Gov. Ex. 637) you sent to St. Luke's Hospital?

A. Yes.

Q. And it conforms to that same form, doesn't it?

A. Yes.

Q. Wasn't your purpose in sending that to St. Luke's identical with your purpose in sending that first one to Mt. Sinai?

A. Yes.

Q. It was?

A. Yes.

Q. I will ask you whether that is not the same letter you sent to the Misericordia Hospital the same date (Gov. Ex. 636)?

A. Yes.

Q. Isn't it identical with the same letter to which I have referred?

A. Yes.

Q. And identical with the letter you had sent to Mt. Sinai?

A. Yes.

Q. And sent for the same purpose?

A. Yes.

Q. And didn't you cause a memorandum to be made of the staff affiliations of these doctors and of the staffs of all the various hospitals in Milwaukee at that time?

A. Yes.

Q. Is that the memorandum (Gov. Ex. 624) which I hand you, dated July 30, 1936?

A. Yes.

Q. Wasn't that done contemporaneous with this attack on these expelled doctors?

A. It was done contemporaneously with the preparation of those letters you have just read.

Q. And wasn't it done contemporaneously with your action toward denying these hospitals your approval?

A. Yes.

Q. And didn't it make a thorough job of all the large hospitals in Milwaukee and take up each one in turn?

A. It mentions eight hospitals.

Q. And they are Columbia, Evangelical Deaconess, the Passavant, Misericordia, Mount Sinai, St. Joseph's, St.

A. Yes.

Luke's, and St. Mary's Hospitals?

Q. So you were then checking on all those hospitals in connection with these expelled doctors?

A. Yes.

Q. Didn't you receive this letter back from the Misericordia Hospital which I now show you?

A. Yes.

Q. This is your letter (Gov. Ex. 625). You wrote again to Misericordia on October 26, did you not?

A. Yes.

Q. Didn't you say:

"This is in continuation of our previous correspondence about qualifications for staff membership in Misericordia Hospital. We have been informed that the Council of the Wisconsin State Medical Society has upheld the action of the Milwaukee County Medical Society in expelling certain physicians for unethical behavior.

How does this action affect Misericordia Hospital? Are all members on your staff in good standing with the Milwaukee County Medical Society or eligible for membership in that society?"

And then didn't you receive this reply (Gov. Ex. 626) from Misericordia Hospital, dated November 10, 1936?

A. Yes.

Q. Didn't the hospital write back on that date:

"DEAR DR. CUTTER:

In response to your request of October 26, we wish to apologize for this long delay. A special executive meeting was called to take up this matter.

We do have some staff members who have been expelled by the Milwaukee County Medical Society for what they deemed unethical behavior. We have been awaiting a final decision from the American Medical Association before taking final steps in requesting their resignation. We shall appreciate having the opinion of the A. M. A. on this matter."

And in response to that, didn't you send the Misericordia Hospital your opinion as to what that hospital should do?

A. Yes.

Q. Didn't you intend by this letter (Gov. Ex. 627) I have just shown you to put pressure on Misericordia Hospital to follow the policies of your council with regard to limiting its staff?

A. Yes.

Q. Didn't you say this (Gov. Ex. 627):

"We are taking this means to answer two letters recently received from Misericordia Hospital.

The first of your letters dated November 10 asks for an opinion from the American Medical Association regarding the affiliation of physicians charged with unethical behavior on the staffs of hospitals which it registers. Marked copies of the 'Essentials' for hospital registration and of the 'Code of Ethics' of the American Medical Association are incorporated for your convenience.

Our attention has also been called to your letter of October 29 which informs us of certain changes in your house staff program. On the basis of this information, we assume that you have decided to abandon intern training for the time being. We believe it best for all concerned, therefore, to omit mention of Misericordia Hospital in our published approved internship list in order that prospective interns may not be misled into believing that appointments are still available at Misericordia Hospital.

If this is not the proper interpretation placed on your recently submitted information, we feel sure that you will communicate with us further."

A. Yes.

Q. And didn't you immediately get this letter (Gov. Ex. 628) of December 5, 1936, from Misericordia:

"In reply to your letter of December 1, we wish to state that the necessary steps will be immediately taken to notify our staff physicians who are violating the 'Code of Ethics,' that we find it necessary to refuse their patients accommodation in our hospital."

Wasn't that the promise you sought?

A. That is what she said.

Q. Wasn't that what you were after, to get that sort of a promise from her?

A. I think so.

Q. Then after you got that, didn't you write back and tell her everything was jake—

Mr. Leahy: Read the rest of the letter.

Mr. Lewin: I will be glad to (Reading Gov. Ex. 628):

"May we state that our recent communication regarding internship was misinterpreted. We have no desire to discontinue offering internship service at Misericordia. In fact, we are better prepared now than ever before to offer a more complete interne service, since our daily average of patients has perceptibly increased. We have been thinking seriously of maintaining three internes.

The reason for having the Resident and two internes this year is due to the fact that we were too late in making our requests. The prospective internes had already received their appointments. The only available course left to us was to accept a resident and two internes. We hope that this arrangement meets with your approval, and that an internship at Misericordia may remain on your approved list.

We appreciate your kind advice in these matters, and will take every means to meet your requirements."

And after you got that didn't you write back in substance that everything was O. K. and that the hospital would be continued on the approved list?

A. Yes.

Q. This is your letter (Gov. Ex. 654) dated December 11, 1936?

A. Yes.

Q. Now, didn't I understand you to testify yesterday that your Council on Medical Education and Hospitals is responsible directly to the House of Delegates?

A. Yes.

Q. And that it doesn't work in close cooperation with the enforcement of the Judicial Council pronouncements?

A. Yes.

Q. Now let me read you, let me call your attention to an action of the House of Delegates in 1935 (Gov. Ex. 606). It is headed "Report on Judicial Council."

"Your committee notes that as a result of the discussions and pronouncements of the Judicial Council there has been a steady improvement in the methods by which medical service is made available to the public. It regrets, however, that much remains to be accomplished, and it believes that the time has arrived when we should insist on the strict enforcement of the Principles of Medical Ethics by all constituent societies for, as so well stated by the Council, the Principles of Medical Ethics is accepted as a guide in professional relations and intelligently and faithfully followed by a large majority of the profession. There are, however, some isolated instances in which this is not true. The delinquents comprise individuals, certain groups and a few institutions. Solicitation of patients, particularly in industrial practice, unfair competition by clinics, and groups, and unethical and unlawful practice of medicine by hospitals, dispensaries, insurances and universities furnish outstanding examples. (29-30) (41)

The Council further states, 'Public confidence in our avowed declarations for medical control over things medical cannot be successfully cultivated or maintained unless we exclude or remove from the ranks of our organized profession those who ignore our ethical code, especially as it applies to the true professional spirit in our relations with each and every patient.' It will be recalled, the Council continues, that 'last year the House of Delegates amended its Principles of Medical Ethics so clearly that there can be no misunderstanding of the conditions mentioned but the present method of procedure of preferring charges makes the pronouncement ineffective.' Your committee, therefore, deems it advisable to extend the origination of charges, in certain situations manifestly too great for county societies to handle, to the state association and possibly in

rare instances to the national organization. Your committee agrees with the Judicial Council that, when the House of Delegates sees fit to extend such jurisdiction in matters of discipline, the Council should have the duties and powers then enjoined on it but should not at any time be expected to function in an ex parte capacity. ○

The Judicial Council again reminds us that Medical ethics follow every member of the American Medical Association, whether in hospitals, in universities, in clinics or in private practice. While the member is at all times subject to the ethics of the profession, the hospital, university or clinic, as an entity, is not. Through the Council on Medical Education and Hospital in cooperation with the Judicial Council, sufficient oversight, persuasion and, if needed, pressure can be brought to accomplish that which the physicians in such institutions, as individuals, cannot. With such concerted action between the two Councils and with such enforcing legislation as has been suggested, many harmful and obnoxious practices would cease and others, not now presenting any large problem, would be prevented."

Your committee, therefore, recommends that the Council on Medical Education and Hospitals, "—that is your council, isn't it?

A. Yes.

Q. "Together with the Judicial Council" —That is the one which passes on expulsion proceedings, isn't it?

A. Yes.

Q. "Formulate a plan whereby all those"—That means the hospitals?

A. Yes.

Q. "Associated in the delivery of Medical service be included in the investigation of hospitals for classification and that approval be based in the future on the ethical practices of the institution as well as on its scientific work."

Now, you were aware of that resolution, were you not?

A. Yes.

Q. And didn't you take action in connection with it? Were you familiar with this report of the Judicial Council made to the House of Delegates in 1937 in connection with that resolution asking for cooperation between your council and the Judicial Council (Gov. Ex. 608)?

"The 1935 House of Delegates recommended that the Council on Medical Education and Hospitals, together

with the Judicial Council, formulate a plan whereby all those associated in the delivery of medical service be included in the investigation of hospitals for classification and that approval be based in the future on the ethical practices in the institution as well as on its scientific work." Consequently the Judicial Council met with the Council on Medical Education and Hospitals in February this year and after thorough discussion presented the basis of a plan for the desired cooperation of the two councils. The problem, which involves many difficulties, will require some time for its solution."

Do you remember that report?

A. Yes.

Q. Is it true?

A. Yes.

Q. Did you meet with the Judicial Council to formulate a plan of cooperation between the two, whereby you could force on the hospitals your so-called medical ethics?

A. That was the purpose of the resolution of the Judicial Council.

Q. And in that meeting didn't you work out a plan with the Judicial Council whereby you would enforce these registration requirements and the Mundt Resolution against hospitals which the Judicial Council had passed on and against doctors which the Judicial Council had expelled?

A. No, sir, we did not discuss that.

Q. You mean to say that this action which you took in connection with Mt. Sinai, in connection with all these other hospitals in Milwaukee was not done pursuant to the plan which had been worked out?

A. Absolutely had nothing to do with it.

Q. I think I can be a little more speedy about those things. I just want to call your attention to the fact that you approached the Passavant in the fall of 1936 in the same way as the others. Gov. Ex. 634 is the same as your other letters?

A. Yes.

Q. And then didn't you approach the State Medical Society of Wisconsin again in the fall of 1936 with reference to the doctors Curtin, Dallwig, Rueth, and Sullivan?

A. I think we did.

Q. Is that your letter (Gov. Ex. 629) to that society, dated October 14, 1936?

A. Yes.

Q. Aren't you still seeking information about their status so that you could enforce this restriction on the hospitals?

A. Yes, we were still seeking information.

Q. And for the purpose of enforcement against these hospitals?

A. Yes.

Q. This was to the secretary, State Medical Society of Wisconsin, Mr. J. G. Crownhart, dated October 14, 1936 (Reading Gov. Ex. 629):

"DEAR MR. CROWNHART:

We have understood from various parties in Milwaukee that the physicians who were expelled from the Milwaukee County Medical Society for participation in the Milwaukee Medical Center have made an appeal to the Council of the State Medical Society. The physicians referred to are:

A. L. Curtin,
H. C. Dallwig,
J. E. Rueth,
G. A. Sullivan,
H. F. Wolters.

Can you tell me whether the Council of the State Society has handed down any decision in this matter?

For your information I may say that the approval of certain hospitals for intern training is jeopardized because of the presence of some of these men on their staffs."

Q. What is your testimony now as to whether you were enforcing the Mundt Resolution against these hospitals?

A. I still say they would be jeopardized if taken off the register.

Q. And if you enforced the Mundt Resolution the effect would also be to jeopardize their position?

A. We never attempted to do that.

Q. Didn't Mr. Crownhart reply (Gov. Ex. 630 dated Oct. 16, 1936):

"I have your letter of October 14 as to the present status of the following-named physicians in Milwaukee:

A. L. Curtin,
H. C. Dallwig,
J. E. Rueth,

G. A. Sullivan,

H. F. Wolters.

These physicians were expelled from the Medical Society of Milwaukee County and on appeal to the Council of this Society, the attached decision sustaining the expulsion was handed down on September 8. It has been my informal understanding that the physicians concerned would appeal to the Judiciary Council of the American Medical Association. Perhaps you had better check with Doctor West on this point to ascertain whether the appeal has been filed in fact."

You did get an enclosure telling you just what the charges were against these doctors?

A. I don't remember what was in the enclosure.

Q. Didn't he say he was enclosing the "attached decision"?

A. Yes.

Q. And whatever it was you got it?

A. Yes.

Q. Now, you told us that C. M. P. is Dr. Peterson?

A. Yes.

Q. And he was one of your inspectors?

A. Yes.

Q. Operating under your supervision?

A. Yes.

Q. And who is Mr. Sanger?

A. He is the director of the Hospital Division of the Council.

Q. And he operates also under your supervision?

A. Yes.

Q. Now, let me show you what purports to be a memorandum from Dr. Peterson to Mr. Sanger dated October 22, 1936, in this same matter. Is this the memorandum from Dr. Peterson to Mr. Sanger (Gov. Ex. 652)?

A. It may be.

Q. Wouldn't he be authorized to say that?

A. No.

Q. Dr. Cutter, just a few more questions about your correspondence. After receiving information from Dr. Crownhart of the State Society that they had upheld the action of the Milwaukee Society; after receiving a copy of that decision, you then wrote the rest of the Milwaukee hospitals again, didn't you?

A. I don't recall.

Q. Didn't you write, on October 27, 1936, to St. Joseph's Hospital, and isn't this your letter which I hand you (Gov. Ex. 631)?

A. Yes.

Q. That is your signature?

A. Yes.

Q. Did you say in that letter:

"We have recently been notified that certain physicians have been expelled from the Milwaukee County Medical Society for unethical practices and that the action of this constituency has been upheld by the Council of the State Medical Society of Wisconsin.

How does this action affect St. Joseph's Hospital? Are all members on your staff in good standing with the Milwaukee County medical society or eligible for membership in that society?

Very truly yours, William Dick Cufter."

And didn't you get this reply (Gov. Ex. 632)?

A. Yes.

Mr. Leahy: Will you show this to the Court, please?

The Court (after examining document): Do you object to it?

Mr. Leahy: Yes.

Mr. Lewin: He says he received it and acted on that information, and went after the other hospitals as a result.

The Court: If he did, it would be admissible.

Mr. Lewin: He threatened Mt. Sinai. What more do you want? That is why I kept after Mt. Sinai and got this information; he was going to do a thorough job.

The Court: You mean the letters you have already referred to show that?

Mr. Lewin: Yes.

The Court: Then I think it would be admissible. It cuts both ways.

The objection of the defendants of incompetency, immateriality, irrelevancy, hearsay, as no conspiracy proven and too remote, was overruled and exception noted.

Q. This reply which I think you received from St. Joseph's dated November 2, 1936, reads (Gov. Ex. 632):

"DEAR DOCTOR:

In reply to your letter of October 27th in regard to certain physicians who were expelled from the County Medical Society, I have only to say that they are no longer members of our staff but have also been barred from working in our hospital.

This is no great punishment to them as there are other hospitals in the city who welcome them with open arms."

After you got that letter didn't you continue with your correspondence with Mount Sinai, which has already been reviewed in evidence, and your correspondence with the other hospitals?

A. I may have continued with Mount Sinai, but I don't recall about the others.

Q. Here is a letter (Gov. Ex. 656) which antedates that letter, October 26, to St. Luke's; isn't that identical with your letter to St. Joseph's?

A. Yes.

Q. And isn't this your follow-up: When you received no reply, didn't you follow that up again to see whether they were permitting these doctors on their staff? Isn't this yours, November 12, 1936 (Gov. Ex. 633)?

A. That is right.

Q. Isn't that after you got this letter from St. Joseph's saying that some hospitals were letting them in?

A. Yes.

Q. Didn't you finally get assurance that your wishes were met in St. Luke's Hospital? I show you this letter dated November 14, 1936, (Gov. Ex. 640). Did you receive that?

A. Yes.

Q. And here is the correspondence you had with St. Luke's. I won't read this first letter, of October 26, because it is exactly like the one you sent to St. Joseph's, isn't it?

A. Yes.

Q. And here is your follow-up letter of November 12, 1936, to St. Luke's (Gov. Ex. 633):

"MY DEAR MISS JACOBSON:

On October 26 we wrote you regarding our mutual problem of physicians who have been expelled by your County Medical Society.

We have not heard from you, and trust you will send us your reply.

Very truly yours,"

And doesn't the reply (Gov. Ex. 640) say that they have no members of the hospital who are not members of the Milwaukee Medical Society?

A. Yes.

Q. Didn't you do the same thing with the Evangelical Deaconess Hospital? Didn't you write the same letter on October 27 to that hospital you wrote to St. Joseph's, and send them the letter (Gov. Ex. 655)?

A. Apparently.

Q. And didn't you do the same thing with Passavant Hospital, writing them substantially the same letter on October 28, 1936 (Gov. Ex. 634), the same day you wrote the others?

A. This is a little different letter.

Q. Is there any substantial difference? Shall I read it? This is to the Passavant Hospital (Gov. Ex. 634):

"October 27, 1936.

"Rev. Herman L. Fritschel, Supt., Milwaukee Hospital,
'The Passavant', Milwaukee, Wisconsin.

DEAR REVEREND FRITSCHEL:

We have recently been notified that certain physicians have been expelled from the Milwaukee County Medical Society for unethical practices and that the action of this constituency has been upheld by the Council of the State Medical Society of Wisconsin.

We have received no intimation that the expulsion of these men affects the staff roster at 'The Passavant' in any way. However, we are making inquiry of all approved hospitals in Milwaukee to learn if all members on your staff are now in good standing in the Milwaukee County Medical Society or eligible for membership therein.

Very truly yours,"

And I think you received a satisfactory response from the Passavant Hospital, did you not?

A. Yes.

Q. Is this it, dated November 3, 1936, from that hospital (Gov. Ex. 639)?

A. Yes.

Q. And didn't you receive from the Misericordia Hospital evidence that it was going to respect and was acting in response to your suggestion? I hand you what purports to be a memorandum from the superintendent of that hospital to the staff of Misericordia Hospital, dated May 11, 1937 (Gov. Ex. 635). Did you ever see that memorandum before?

A. No, I never saw it.

Q. Wasn't it in the files of your Council on Medical Education and Hospitals?

A. I couldn't say.

Q. All right. Didn't you gain knowledge that as a result of these activities which we have been exploring that you were supposed to get all of the Milwaukee hospitals that you listed on that earlier memorandum to comply with your wishes?

A. My recollection is that all the hospitals except Mount Sinai, by the early spring of 1938, had limited their staff membership to those who were members of the county society or eligible to become members.

Q. And you don't attribute that result in the slightest degree to your efforts?

A. I do not say that; I think it may have affected it.

Q. You think it may have affected it. Now, isn't it true that you regarded the Mundt Resolution, even though phrased as it was, as an edict of the House of Delegates?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Didn't you refer to it as an edict of the House of Delegates in your correspondence? I show you now what purports to be your letter of July 22, 1938, addressed to Dr. D. L. Sprinkle, Superintendent, Tampa Municipal Hospital, and ask you if this is your letter (Gov. Ex. 643)?

A. Well, this letter refers to an edict of the House of Delegates, but the use of that word is entirely unauthorized and unjustified.

Q. Did you write that letter?

A. No.

Q. That isn't your letter?

A. No.

Q. Doesn't it bear your dictation initials?

A. It was customary to put those initials on any letter I signed.

Q. Doesn't it bear your dictation initials?

A. Signature initials.

Q. Does it bear anybody else's initials indicating it was written or dictated by anyone else?

A. No.

Q. It bears the initials "W.D.C.:M.W.", the latter for the stenographer?

A. Yes.

Q. Did you read it over before you signed it?

A. I don't think I did.

Q. But at any rate you sent this out?

A. Yes; it was sent out from our office.

Q. Isn't this what it says here (Gov. Ex. 643):

"You realize that the Council on Medical Education and Hospitals is carrying out the edict of the House of Delegates of the American Medical Association, which is here reiterated."

And then don't you include in here the Mundt Resolution, quote it in full?

A. Yes, I did.

Q. Isn't this the situation: You were prepared to put this pressure on the hospitals in the form of suggestion, were you not? You simply quoted the Mundt Resolution, and asked what possibility, if any, there was for observance. That was your method?

A. The procedure adopted by the Council was to send copies of the Mundt Resolution as a matter of information, and ask the question as to what they proposed to do about it.

Q. And usually you got results in that way?

A. More or less.

Q. But you were prepared to use more drastic methods if necessary?

A. Not on the basis of that resolution.

Q. Let me show you a letter (Gov. Ex. 642) which purports to be from you to Dr. Knudson, President, King County Medical Society, Seattle, Washington, and ask you if this is a copy of your letter. I am referring particularly to this second paragraph, Dr. Cutter.

A. That letter was sent out from my office.

Q. You signed your name to it?

A. Yes, sir.

Q. Does it not carry this paragraph—March 28, 1936 (reading Gov. Ex. 642):

"This information regarding Medical Society memberships will be particularly useful to us at this time, because we are now contemplating a survey of the Seattle hospitals shortly after the American Medical Association convention in San Francisco. So far it has not been necessary to take drastic action against any hospital on the basis of the membership resolution of the House of Delegates, since prompt results have usually been obtained by less formidable action on the part of the Council."

Have I read that correctly?

A. Yes.

Q. Does that refer to the Mundt Resolution?

A. Yes, sir.

Q. Now, Doctor Cutter, just as we closed the session of yesterday I had asked you this question and you had given me this response (reading):

"Q. And, as a matter of fact, is it not true that as a result of your letters to those five hospitals"—meaning the five Washington hospitals—

"in the summer of 1937 you did get those five hospitals substantially to promise compliance with that restriction? And by 'that restriction' I mean the Mundt Resolution."

And your answer was "No, sir."

Do you still stand on that testimony?

A. Yes, sir.

Q. Now I will hand you a sheaf of correspondence between you and the five Washington hospitals and ask you to answer some questions in regard to it.

Did you not on July 27, 1937, call the Washington Sanitarium's attention to the Mundt Resolution (Gov. Ex. 236)?

A. Yes, sir.

Q. That is the first time you had ever done it, was it not?

A. No, sir.

Q. The Washington Sanitarium?

A. No, sir.

Q. When had you done that before?

A. In 1934.

Q. Oh, yes; when you sent out a round-robin letter to all hospitals?

A. Yes, sir.

Q. Was this the first time you had done that specifically in regard to that hospital?

A. So far as I can recall, that is the first time we had had any correspondence with this hospital since 1934.

Q. When did you say it had been approved for interne training?

A. I don't recall.

Q. When had it been inspected last?

A. I can't recall offhand.

Q. Did you not give that testimony yesterday? Did you not have a little notebook that you referred to?

A. I gave you the dates when some of these had been inspected but I don't know which one it was.

Q. Had Washington Sanitarium ever been inspected before by Peterson?

A. Yes, sir.

Q. When?

A. I don't remember when.

Q. Would you say it was 1933, the last time it had been examined?

A. I remember that one of these hospitals was examined in either 1933 or 1934, but I am not certain whether it was George Washington or Washington Sanitarium.

Q. After you made that suggestion to the Washington Sanitarium they wrote back and asked you a question about it, did they not?

A. Yes.

Q. And did they not say this (Gov. Ex. 235):

"Each application for staff appointment calls for the Medical Societies to which the applicant belongs. Would this meet the requirement of the resolution?"

Is that correct?

A. Yes, sir.

Q. And did you not respond to that inquiry?

A. Yes, sir.

Q. And did you not say in response to that inquiry, on October 5, 1937 (Gov. Ex. 231):

"As far as the resolution of the House of Delegates is concerned the intention remains that all hospitals stipulate membership in the County Medical Society as the basis for the assignment of hospital privileges. The great majority of hospitals with which we have corresponded on this point have agreed that this is a good basis on which to operate."

Is that right?

A. That was what the letter said.

Q. That is what you said?

A. I didn't write that letter.

Q. Did it not go out over your signature?

A. Yes.

Q. Then you were saying it, were you not?

A. No.

Q. Are you not willing to take responsibility for it?

A. I have to take responsibility for what I send out, but that is not what I dictated.

Q. Is not that what you would have dictated?

A. No, sir.

Q. Was there anything wrong with it?

A. It stated that the Council intended to stipulate that membership in a County Society must be required; that was not the intention of the Council.

Q. Did you not write to Sister Rodriguez of Georgetown Hospital? Georgetown was one that was applying for approval of residents, was it not?

A. Yes, sir.

Q. And did you not say in that letter (Gov. Ex. 237):

"What possibility, if any exists for the observance of this recommendation in Georgetown University Hospital?"

A. Yes, sir.

Q. Were you not referring to and quoting the Mundt Resolution?

A. Yes, sir.

Q. Did you not get back this answer from the Superintendent of that hospital (Gov. Ex. 238):

"The executive staff ruled in its last meeting"—This was as late as October-18, 1937, was it not?

A. Yes.

Q. (Continuing reading:)—"that no physician shall be nominated or elected to any staff of the hospital unless he is a member of his local medical society or the American Medical Association. Doctors who are already on the staffs specified by you as not meeting these requirements will be notified to qualify within the year."

Is not that what she told you?

A. Yes.

Q. Did you not regard that as an assurance of compliance with what you wanted to achieve?

A. Yes.

Q. Did you not write to Sister Margaret of Providence Hospital also in the summer of 1937, quoting the Mundt Resolution, and asking the same question of that hospital (Gov. Ex. 239)?

A. Yes, sir.

Q. And when had Providence Hospital been last inspected?

A. I don't recall.

Q. Was it one of those that was applying for residency that spring?

A. Yes, sir.

Q. Did you not say in the same letter that you had other criticisms of the hospital?

A. Yes, sir.

Q. And did you not say (Gov. Ex. 239) that—

“As matters now stand we believe it quite likely that when this statement is submitted to the Council at their next regular meeting in November, internship approval will be withdrawn?”

A. Yes.

Q. Was not one of the reasons for the opinion that you so stated the fact that Peterson's report disclosed that they were not confining their staffs to members of the American Medical Association?

A. No, sir.

Q. Did you point out in the letter that that criticism had no bearing upon this opinion of yours that the Council would withdraw the internship approval?

A. That was not mentioned in that letter.

Q. But you did call, in that letter, her attention to this criticism?

A. Yes.

Q. You did quote the Mundt Resolution?

A. Yes.

Q. You did ask for her compliance?

A. I asked what they proposed to do about it.

Q. Did not she write back to you and say (Gov. Ex. 240):

“No words can express my distress at the possibility of losing the American Medical Association's approbation of our interne training school. Nothing will be omitted either by the staff of the hospital or the superintendent to prevent

what would prove a dire catastrophe to Providence Hospital, the loss of its credit for interne training."

Did you not regard that as assurance that she would eliminate the things you criticized?

A. Not necessarily all of them.

Q. Well, you felt that that was sufficient assurance that all of them would be eliminated, when she said that nothing would be omitted. She told you nothing would be omitted, did she not?

A. I think she qualified that by saying that nothing that they could do—the approval of hospitals was not based on a requirement that every single recommendation should be carried out a hundred per cent. It was based on the entire picture of the hospital and its ability to give good training to internes.

Q. Did not she in that letter promise you one hundred percent compliance, and did you not so understand it?

Mr. Leahy: The letter speaks for itself. Let us not argue with the witness.

Q. Is there any qualification of this statement? (Reading):

"Nothing will be omitted either by the staff of the hospital or the superintendent"—

Is not that what she said?

A. I don't recall that. You have the letter.

Mr. Leahy: The letter speaks for itself, if your Honor please.

Q. Did she not write to you again on October 12 and give you definite assurances with regard to this Mundt Resolution requirement, in specific terms?

A. My recollection is that in that letter she said that the criticisms in the report were very well founded and that the staff had unanimously agreed to meet all of the suggestions.

Q. Did she not say this (Gov. Ex. 241):

"Members of the staff who did not belong to the Medical Society of the District of Columbia have been contacted and at the present time all members have submitted their applications for membership, so that now, with those exceptions, all members of our staff are members of the American

Medical Association or affiliated with its constituent societies."

Is that right?

A. I don't have the letter before me, but that may be a correct statement.

Q. The letter is right before you, Dr. Cutter. That is why I gave you the exhibits. That is Exhibit No. 241. I think I have quoted that letter correctly.

A. I think you have, too; but I could not verify it without seeing it.

A. Yes, sir; that is as you read it.

Q. And she was assuring you then that she was taking steps to comply with the Mundt Resolution?

A. Yes, sir.

Q. Let us turn to George Washington University Hospital. In August, 1937, you made the same suggestion to George Washington Hospital (Gov. Ex. 242), did you not?

A. That is right.

Q. And you got a reply from the Medical Director, Dr. Bloedorn (Gov. Ex. 243) did you not?

A. Yes, sir.

Q. He did not say anything about the staff membership requirement in that first letter, did he, so that you had to write again?

A. He did not reply at all for quite a long time. That is why I had to write a second time. I got no reply.

Q. When you wrote again you said this (Gov. Ex. 215):

"Has any action been taken with respect to the resolution of the House of Delegates on the subject of staff membership contained in our letter of August 23."

You wrote that in October, 1937, did you not?

A. That is correct.

Q. And then he responded to that, did he not, on November 4?

A. Yes, sir.

Q. Did he not say (Gov. Ex. 243):

"With respect to the resolution of the House of Delegates on the subject of staff membership, we find that only nine members of the total staff are not members of the local Medical Society, and that of these nine, six are full time members of the staff of St. Elizabeth's Hospital in the department of psychiatry. As we do not have a psychiatric

department in George Washington University Hospital, these members are used primarily in a teaching capacity for our medical students who go to St. Elizabeth's Hospital, which, as you know, is a psychiatric institution."

Then did he not say this:

"The problem, then, is reduced to three members of the clinical staff."

A. Yes, sir.

Q. Did you not take that as assurance that you were going to have compliance with the Mundt Resolution in that hospital?

A. It does not indicate complete compliance, because there were nine who were not members.

Q. Did he not explain that that problem was reduced to three; that six of them were on the teaching staff of a psychiatric institution?

A. But they were not members of the District Society.

Q. He told you he was going to reduce that very shortly. Is not that what he assured you of?

A. That is what he said; yes.

Q. You adopted the same method with regard to Columbia Hospital, did you not?

A. The same kind of a letter (Gov. Ex. 223) was sent to Columbia Hospital.

Q. He did not reply to it, did he, from September 8 until in November?

A. Oh, no; he replied on the 14th of September (Gov. Ex. 224).

Q. Oh. Did he? He did not reply with regard to the Mundt Resolution, did he?

A. There was no reference to it in that letter.

Q. So you wrote him on November 3, 1937 (Gov. Ex. 227) again, asking if he was in position to report any action on the Peterson report, and saying, did you not—

"This present inquiry also extends to the resolution which was quoted in our letter of September 8 relating to County Society membership as a basis for hospital privileges."

A. There were two letters in between there, but this letter is correct.

Q. And did you not receive a reply (Gov. Ex. 228) then, to that inquiry, from the superintendent of Columbia Hospital on November 5, 1937?

A. Yes, sir; November 5.

Q. Did he not say (Gov. Ex. 228):

“As for the demand that physicians on the staffs of hospitals approved for interne training should be limited to members in good standing of their local County Medical Societies, it meets with the approval of the Medical Board as regards future appointments.”

A. Yes.

Q. (Continuing reading:) “So far as known, all the present members of the staff of this hospital, except one, are members of the District Medical Society. The exception is a man of long service in the hospital and of high standing in the profession. His reasons for not belonging to the Society are probably personal, and nobody on the Medical Board suggested that any action be taken in his case.”

A. Yes, sir.

Q. Did you not find that reply satisfactory and a substantial compliance?

A. Yes, sir.

Q. Was Columbia then approved for interne training?

A. No, sir.

Q. Was it approved for interne training later?

A. No, sir.

Q. Why were you bringing the Mundt Resolution to the attention of the Columbia Hospital? Did you go outside of the hospitals that you were approving for interne training to enforce this resolution?

A. I think it was just a ~~matter of routine~~ that it got in there by accident, because it never was an interne hospital. It is a special hospital.

Q. You had more correspondence on this subject with Columbia than you did with any of the others, did you not?

A. I would not say it was more than we had with any of the others.

Q. Any of the other five here; is not that right?

A. I don't know the exact number of letters. It may be.

Q. As a matter of fact, most of this correspondence that we have called your attention to was after you had had occasion to read Dr. Woodward's article which Dr. Fishbein

published in the American Medical Association Journal regarding Group Health; is not that right?

A. The correspondence began on the 8th of September and was followed up on the 14th, 17th, and 29th of September. It was not until November that any letter was written after the publication of that article.

Q. The article was published on October 2?

A. That is right.

Q. And Dr. Woodward had been writing it through the summer?

A. I don't know anything about that.

Q. Had he not submitted a draft of it early in September?

A. I don't know.

Q. You do not know anything about that either?

A. Certainly not.

Redirect examination:

Page 40 of the proceedings of the House of Delegates of the AMA at Atlantic City, June 7 through June 11, 1937 (Gov. Ex. 608) deals with the invitation of representatives of the Judicial Council to meet with the Council on Medical Education and Hospitals. At that time the Judicial Council wanted some cooperation from the Council on Medical Education and Hospitals with reference to the practice of medicine by hospitals, particularly in connection with the Department of Radiology. This cooperation which the Judicial Council wanted had nothing at all to do with group practice; prepayment plans, contract practice of medicine, or anything of that sort, and "related to the practice of some hospitals of going into the practice of medicine through their radiological department and furnishing radiological service to the public, and in connection with that they very frequently exploited their radiologist." Cooperation was desired by the Judicial Council in a "situation which occurred in some hospitals wherein the hospital might take in \$50,000 or \$70,000 on its radiological department, and then employ a man to do the work at perhaps a salary of \$5,000; and the practitioners in those localities, and particularly the radiologists felt that was a very unfair arrangement, and they had appealed to the Judicial Council to see if something could be done to stop it." The Council thought something ought to be done to stop the exploitation of patients by a practice of that kind, and the profession felt the same way; and that is what we were all

going to cooperate together to try to prevent. It did not have anything to do with Group Health, with contract practice, with Mt. Sinai Hospital, or with the Milwaukee Medical Association.

Pages 40 and 41 of the proceedings of the House of Delegates held June 10 to June 14, 1935 (Gov. Ex. 606), did not have anything whatsoever to do with group practice of medicine, or contract practice of medicine, or prepayment plans; or however you might describe them. The proceedings had reference to this radiology situation. The Council and the Judicial Council had been discussing the matter of hospitals exploiting for two years, from 1933 to 1935. The Council recommended to the House of Delegates and "the general tenor . . . was that we had had conference between the Council on Medical Education and the Judicial Council and we had tried to cooperate with the Judicial Council by securing for them information concerning the operations of hospitals, in their radiological departments." The minutes of 1936 speak of a plan that was to be devised and the words are used there in the sense that it would take some time to work out a plan, and no very satisfactory one was ever worked out. The practice of which we were complaining, I don't think was finally stopped.

The American College of Surgeons examines hospitals and investigates hospitals to keep them up to standards. The distinction between that examination and the examination of the AMA is as follows:

"The examination which we make of hospitals is directed to their educational program for internes and residents. The examination which the College of Surgeons makes is not directed to the educational function of the hospital, but rather to the function of rendering medical care to its patients—medical and surgical care; and the approval of the College of Surgeons is based upon an examination of the hospital with reference to its ability to provide good, sound medical care for its patients."

The American College of Surgeons was founded in 1913 and its program of inspection of hospitals began just after the war in 1918 or 1919. There are no other agencies which have facilities for inspecting hospitals. The AMA changed the title of the Council from the Council on Medical Education to the Council on Medical Education and Hospitals in

1919, and the actual visitation of hospitals began a few years later, about 1923. From that time the approval given by the AMA has been recognized generally throughout the United States and our registration of hospitals is utilized by the Government of the United States very extensively.

Q. Is it utilized now on the question of the national defense?

A. Yes; it is.

Mr. Lewin: Wait a minute.

Mr. Leahy: It is on the question of the value of approval.

The Court: I will sustain the objection. We are dealing with a different period here. Exception.

Q. What is the attitude of the Council with reference to any hospital, whether it is in Milwaukee, Seattle, Chicago, Washington, D. C., Boston, or any other city that you can think of, which retains upon its staff five doctors who have been expelled from their local medical society by the vote of the majority of the members as being unworthy of belonging to the society?

A. The Council would feel that such hospital did not conform to the requirements of the essentials for a registered hospital.

The membership of the staff of a hospital is of the greatest importance because the character of the service which is rendered in the hospital depends upon the character and qualifications of the physicians who compose its staff. Under the "Essentials of a Registered Hospital" (Def. Ex. 11) the ethical standing of a doctor who is on the staff is taken into consideration as well as his ability. I use the word "ethical" in reference "to the principles of ethics adopted by our Association," and these principles of ethics of the AMA represent "substantially the principles of ethics which are recognized by all physicians, whether they are or are not members of the AMA." These principles of ethics are usually traced back to the time of Hippocrates, 2,400 years ago.

Q. What is the attitude of the Council of which you are the secretary where a hospital retains upon its staff five men who refuse to abide by and to perform in accordance with those principles of ethics?

A. The Council would consider that such a hospital did not conform to the standards for a registered hospital.

Q. What action then would the Council take with reference to those five doctors, if any?

A. None with reference to them. It would take the hospital off the registered list.

Q. Do you require any hospital to seek registration?

A. No, sir.

Q. Is it not their voluntary act and request?

A. Entirely.

Q. And what you do then is to withdraw the privilege of registration from a hospital; is that right?

A. That is it.

Q. Do you still leave it free for the hospital to keep those doctors on their staff if they want to?

A. Certainly.

Q. Does your Council in any way undertake to impose its will upon the administration of any hospital?

A. The Council does not try to impose its will on any hospital.

Q. For instance, in the city of Washington, when these letters were written, this correspondence back and forth with George Washington, Georgetown, Columbia, and so forth, when, for instance, you found that on the George Washington Hospital staff there were nine doctors who were not members of the Medical Society, six of whom were in St. Elizabeth's Hospital, three of whom were not members of the Medical Society: What action did your Council take with regard to withholding approval from George Washington University Hospital?

A. None at all.

Q. In the case of Columbia Hospital what action did you take?

A. None at all.

Q. And that was after you read the Woodward article, was it not?

A. Yes.

Q. What did you do with reference to the Washington Sanitarium?

A. Nothing.

Q. Did you, in connection with any single Washington hospital, Doctor, officially or otherwise exert threats or any pressure to compel the hospital to have on their staffs only members of the local society?

A. No, sir; we did not.

The paragraph which is numbered Arabic Two under Roman One of the Essentials of a Registered Hospital (Def. Ex. 11) refers to the staff, and under Roman numeral Three there are more details about the medical staff, and, when a hospital applies for approval to the Council, a copy of these Essentials is sent it and the hospital knows in advance of its application what requirements it must fulfill if it expects the application to be granted. The requirements are the essentials and we so publish them.

Def. Ex. 11, "Essentials of a Registered Hospital," prepared by the Council on Medical Education and Hospitals of the AMA, was read from to the jury as follows:

"General Statement.—Hospitals should be organized and conducted primarily for the purpose of providing facilities where the sick and the injured of the community may be given scientific and ethical medical care.

Registration is a basic distinction between all recognized hospitals and those that are refused recognition. It is a prerequisite to the consideration of a hospital for approval for internes or for residencies in specialties.

The registration of hospitals, the approval of hospitals for internes, approval for residencies in specialties, and all other service of the Association regarding hospitals is carried on by the Council on Medical Education and Hospitals. Separate essentials have been adopted for each of these types of approval.

It is the desire of the Council to cooperate in every way for the improvement of hospital service, whereby the sick and injured may be provided with scientific and ethical medical care.

The Council does not have nor does it assume legal authority over any hospital. It recognizes clearly that the officers in charge of such institutions have the unquestioned right to conduct the hospitals in any way they may deem wise. If a hospital desires to have its name appear on the American Medical Association hospital register and thus have the endorsement of that Association, it should be willing to comply with the principles which the Council on Medical Education and Hospitals considers necessary.

I. Organization.—1. The organization should consist of a supreme governing body qualified to administer a hospital. This may be a board of trustees or directors, a partnership

or an individual. Such a board, partnership or individual must assume final authority and responsibility for the administration.

2. There must be a well qualified executive officer who may be designated as administrator, superintendent or director or by some other title. This person should be responsible to the governing body for carrying out its policies. The executive officer should be assisted by competent personnel adequate to the needs of the institution.

II. Physical Plant.—1. The hospital plant should consist of modern, safe buildings maintained in a sanitary condition, provided with fire protection and adequately equipped and furnished for the comfort of patients. Equipment for diagnosis and treatment should be reasonably complete for all types of work the staff purports to carry on in the hospital.

2. Institutions accepting surgical and obstetric patients should provide a modernly equipped operating room, a delivery room, and a nursery. Hospitals that are strictly limited in the service they offer are not expected to have the complete organization and equipment of a general hospital.

III. Medical Staff.—1. Since the medical staff is the most important factor in the delivery of medical service to patients, too great care cannot be exercised in the selection of staff members. The staff should be limited to physicians holding the degree of Doctor of Medicine from medical colleges acceptable to the Council on Medical Education and Hospitals, having satisfactory qualifications as to training, licensure and ethical standing, and to dentists who are graduates of recognized dental colleges and whose professional ability and standing are known to the medical staff.

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3. The form of organization of the staff is determined by the size and the activity of the hospital in accordance with its needs.

4. In very small hospitals where there are few physicians and where an elaborate organization is not practicable, there should still be some authority competent to pass upon the qualifications of those who seek to use the hospital's facilities. Particular care should be exercised in the assignment

of surgical privileges since it is essential for the safety of patients that both the surgeon and his assistants be properly qualified.

5. Where further organization is needed it should consist of such officers as president, secretary and others; and committees, such as executive, medical records and credentials, elected or appointed according to the constitution and by-laws.

6. Staff departments such as medicine, obstetrics and surgery, should be organized as may seem wise.

7. Staff meetings should be held for the review of the work of the hospital, the discussion of results, the reports of autopsy and pathologic studies, the presentation of papers and such other matters as concern the professional work of the hospital."

And then follow others on what the pathology and laboratory diagnosis should be, how autopsies should be conducted; radiology, anesthesia, nursing service, dietetics, pharmacy, medical records, and so forth.

If, in examining a hospital, it is found that the hospital is not following the Essentials of a Registered Hospital "the first thing we would do would be to notify the hospital of the things we consider to be lacking, and if they were things that could be reasonably corrected, we would allow them to go on and correct them." The report on the examination of Providence Hospital, an interne hospital, has a summary to it and five points are noted regarding which it was suggested that improvements should be made. The copy of that report, with the five points for correction, was sent to Providence Hospital and the report contains nothing at all to the effect that Providence Hospital must comply with the Mundt Resolution, and it does not refer to anything concerning the staff or its membership.

There are four or five men in my department who handle correspondence, and it is not humanly possible for me to take care of all correspondence that comes to the office. I ask those men to prepare letters in reply to inquiries that come in and submit them to me for signature. The letter dated July 22, 1938 to the superintendent of the Tampa Municipal Hospital (Gov. Ex. 643), states:

"Thank you for your letter of June 29 in which you invite the Council to send a representative to assist you in

the solution of certain problems now confronting the Tampa Municipal Hospital.

It is unlikely that we can release one of our staff men now or in the near future, since the field work is necessarily planned well in advance. You may be sure, however, that the Council desires to be kept informed of what developments may take place. If later it seems desirable a visit may be arranged.

The Council is well aware of the situation existing in Tampa between the Hillsboro County Medical Society and the doctors serving the Latin population through fraternal clubs on a contract basis. The position of the hospital has always been under the purview of the Council. A reasonable amount of time has elapsed during which a solution might have been effected."

Then it says that the Council on Medical Education and Hospitals is carrying out the edict of the House of Delegates of the American Medical Association, and it quotes the resolution, and it goes on to say:

"The principle involved is one of unethical contract practice by members of your hospital staff. This is in conflict with the resolution as well as with your own staff constitution and by-laws. No action for removal of the hospital from the approved list will be taken immediately, and I believe the Council can see its way clear to carry the name of the Tampa Municipal Hospital in the forthcoming list to be printed in the Educational number of the Journal of the American Medical Association, August 27, 1938. If a satisfactory settlement cannot be made during the current year, the recognition of the hospital by the Council may be jeopardized."

Now let me ask you this. If a hospital is operating in conflict with its own staff constitution and by-laws, what effect would that have with respect to the Council's recognition of the hospital so acting in violation of its own staff constitution and by-laws?

A. It would be regarded as a serious breach of the standards which we have proposed.

We published the name of that hospital in the AMA Educational Number of the Journal and gave them a year in which to try to effect an improvement, and, while a year was

mentioned, actually no action was taken at the end of the year, and the hospital remained on the register.

The staff of a hospital which is approved for interne training has more importance from the standpoint of selection of membership than the staff of another hospital which is not engaged in interne training, because it is responsible for teaching young men who have come to them for instruction. In that respect concerning the ethical practice of one teaching younger doctors, he should be a good example to the men he is teaching and that is precisely what we have in mind with reference to the staff when we state in the "Essentials of a Registered Hospital" that it must be an ethical staff, as we are looking out for the young men who are coming up to be doctors.

In the examination of hospitals we always try to ascertain whether the practice which is carried on there is satisfactory and in accordance with modern standards.

Q. Can you tell us what the purpose of the Mundt Resolution was, that is the purpose of the House of Delegates in adopting it?

The Government objected and the objection was sustained and exception was noted.

I don't know how many hospitals have adopted the principle set forth in the Mundt Resolution, and I have no definite information on that. I don't recall exactly what the action of the hospitals in the city of Washington was concerning the principles in the Mundt Resolution, but I think that Providence took some action similar to Georgetown. I do not recall the date that Georgetown Hospital put in effect the principles stated in the Mundt Resolution.

Q. After you read the Woodward article in October of 1937, Doctor, what did you do toward bringing the Mundt Resolution to the notice of the other hospitals in Washington which had not been examined?

A. Nothing.

Q. Did you personally, or through anybody else, bring the Mundt Resolution to their attention?

A. No, sir.

Q. Was anything done with respect to the Washington hospitals differently from what was done with reference to every other hospital in the United States, so far as the Mundt Resolution was concerned?

A. There was nothing different.

Dr. Cutter identified the Principles of Medical Ethics attached to Gov. Ex. 1, a stipulation, and they were read to the jury from the stipulation, as follows:

“Principles of Medical Ethics.

Chapter I.

In General:

The Physician's Responsibility

Section 1.—A profession has for its prime object the service it can render to humanity; reward or financial gain should be a subordinate consideration.

The practice of medicine is a profession. In choosing this profession an individual assumes an obligation to conduct himself in accord with its ideals.

Groups and Clinics.

Section 2.—The ethical principles actuating and governing a group or clinic are exactly the same as those applicable to the individual. As a group or clinic is composed of individual doctors, each of whom, whether employer, employee or partner, is subject to the principles of ethics herein elaborated, the uniting into a business or professional organization does not relieve them either individually or as a group from the obligation they assume when entering the profession.

Chapter II. The Duties of Physicians to Their Patients.

Patience, Delicacy and Secrecy.

Section 1.—Patience and delicacy should characterize all the acts of a physician. The confidence concerning individual or domestic life entrusted by a patient to a physician and the defects of disposition or flaws of character observed in patients during medical attendance should be held as a trust and should never be revealed except when imperatively required by the laws of the state. There are occasions, however, when a physician must determine whether or not his duty to society requires him to take definite action to protect a healthy individual from becoming infected, because the physician has knowledge, obtained through the confidences entrusted to him as a physician, of a communicable disease to which the healthy individual

is about to be exposed. In such a case, the physician should act as he would desire another to act toward one of his own family under like circumstances. Before he determines his course, the physician should know the civil law of his commonwealth concerning privileged communications.

Prognosis.

Section 2.—A physician should give timely notice of dangerous manifestations of the disease to the friends of the patient. He should neither exaggerate nor minimize the gravity of the patient's condition. He should assure himself that the patient or his friends have such knowledge of the patient's condition as will serve best interests of the patient and the family.

Patients Must Not Be Neglected.

Section 3.—A physician is free to choose whom he will serve. He should, however, always respond to any request for his assistance in an emergency or whenever temperate public opinion expects the service. Once having undertaken a case, a physician should not abandon or neglect the patient because the disease is deemed incurable; nor should he withdraw from the case for any reason until a sufficient notice of a desire to be released has been given the patient or his friends to make it possible for them to secure another medical attendant.

Chapter III.

The Duties of Physicians to Each Other and to the Profession at Large.

Article I.—Duties to the Profession.

Uphold Honor of Profession.

Section 1.—The obligation assumed on entering the profession requires the physician to comport himself as a gentleman and demands that he use every honorable means to uphold the dignity and honor of his vocation, to exalt its standards and to extend its sphere of usefulness. A physician should not base his practice on an exclusive dogma or sectarian system, for 'sects are implacable despots; to

accept their thralldom is to take away all liberty from one's action and thought.' (Nicon, father of Galen.)

Medical Societies.

Section 2.—In order that the dignity and honor of the medical profession may be upheld, its standards exalted, its sphere of usefulness extended, and the advancement of medical science promoted, a physician should associate himself with medical societies and contribute his time, energy and means in order that these societies may represent the ideals of the profession.

Deportment.

Section 3.—A physician should be an 'upright man, instructed in the art of healing.' Consequently, he must keep himself pure in character and conform to a high standard of morals, and must be diligent and conscientious in his studies. 'He should also be modest, sober, patient, prompt to do his whole duty without anxiety; pious without going so far as superstition, conducting himself with propriety in his profession and in all the actions of his life.' (Hippocrates.)

Advertising.

Section 4.—Solicitation of patients by physicians as individuals, or collectively in groups by whatsoever name these be called, or by institutions or organizations, whether by circulars or advertisements, or by personal communications, is unprofessional. This does not prohibit ethical institutions from a legitimate advertisement of location, physical surroundings and special class—if any—of patients accommodate. It is equally unprofessional to procure patients by indirection through solicitors or agents of any kind, or by indirect advertisement, or by furnishing or inspiring newspaper or magazine comments concerning cases in which the physician has been or is concerned. All other like self-laudations defy the traditions and lower the tone of any profession and so are intolerable. The most worthy and effective advertisement possible, even for a young physician, and especially with his brother physicians, is the establishment of a well-merited reputation for professional ability and fidelity. This cannot be forced, but must be the outcome of character and conduct. The publication or cir-

ulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not per se improper. As implied, it is unprofessional to disregard local customs and offend recognized ideals in publishing or circulating such cards.

It is unprofessional to promise radical cures; to boast of cures and secret methods of treatment or remedies; to exhibit certificates of skill or of success in the treatment of diseases; or to employ any methods to gain the attention of the public for the purpose of obtaining patients.

Patents and Perquisites.

Section 5.—It is unprofessional to receive remuneration from patents for surgical instruments or medicines; to accept rebates on prescriptions or surgical appliances, or perquisites from attendants who aid in the care of patients.

Medical Laws—Secret Remedies.

Section 6.—It is unprofessional for a physician to assist unqualified persons to evade legal restrictions governing the practice of medicine; it is equally unethical to prescribe or dispense secret medicines or other secret remedial agents, or manufacture or promote their use in any way.

Safeguarding the Profession.

Section 7.—Physicians should expose without fear or favor, before the proper medical or legal tribunals, corrupt or dishonest conduct of members of the profession. All questions affecting the professional reputation or standing of a member or members of the medical profession should be considered only before proper medical tribunals in executive sessions or by special or duly appointed committees on ethical relations. Every physician should aid in safeguarding the profession against the admission to its ranks of those who are unfit or unqualified because deficient either in moral character or education.

Article II.—Professional Services of Physicians to Each Other.

Physicians Dependent on Each Other.

Section 1.—Experience teaches that it is unwise for a physician to treat members of his own family or himself.

Consequently, a physician should always cheerfully and gratuitously respond with his professional services to the call of any physician practicing in his vicinity, or of the immediate family dependents of physicians.

Compensation for Expenses.

Section 2.—When a physician from a distance is called on to advise another physician or one of his family dependents, and the physician to whom the service is rendered is in easy financial circumstances, a compensation that will at least meet the traveling expenses of the visiting physician should be proffered. When such a service requires an absence from the accustomed field of professional work of the visitor that might reasonably be expected to entail a pecuniary loss, such loss should, in part at least, be provided for in the compensation offered.

One Physician to Take Charge.

Section 3.—When a physician or a member of his dependent family is seriously ill, he or his family should select a physician from among his neighboring colleagues to take charge of the case. Other physicians may be associated in the care of the patient as consultants.

Article III.—Duties of Physician in Consultations.

Consultation Should be Encouraged.

Section 1.—In serious illness, especially in doubtful or difficult conditions, the physician should request consultations.

Consultations for Patient's Benefit.

Section 2.—In every consultation, the benefit to be derived by the patient is of first importance. All the physicians interested in the case should be frank and candid with the patient and his family. There never is occasion for insincerity, rivalry or envy and these should never be permitted between consultants.

Punctuality.

Section 3.—It is the duty of a physician, particularly in the instance of a consultation, to be punctual in attendance. When, however, the consultant or the physician in charge is

unavoidably delayed, the one who first arrives should wait for the other for a reasonable time, after which the consultation should be considered postponed. When the consultant has come from a distance, or when for any reason it will be difficult to meet the physician in charge at another time; or if the case is urgent, or if it be the desire of the patient, he may examine the patient and mail his written opinion, or see that it is delivered under seal, to the physician in charge. Under these conditions, the consultant's conduct must be especially tactful; he must remember that he is framing an opinion without the aid of the physician who has observed the course of the disease.

Patient Referred to Specialist.

Section 4.—When a patient is sent to one specially skilled in the care of the condition from which he is thought to be suffering, and for any reason it is impracticable for the physician in charge of the case to accompany the patient, the physician in charge should send to the consultant by mail, or in the care of the patient under seal, a history of the case, together with the physician's opinion and an outline of the treatment; or so much of this as may possibly be of service to the consultant; and as soon as possible after the case has been seen and studied, the consultant should address the physician in charge and advise him of the results of the consultant's investigation of the case. Both these opinions are confidential and must be so regarded by the consultant and by the physician in charge.

Discussions in Consultation.

Section 5.—After the physicians called in consultation have completed their investigations of the case, they should meet by themselves to discuss conditions and determine the course to be followed in the treatment of the patient. No statement or discussion of the case should take place before the patient or friends, except in the presence of all the physicians attending or by their common consent; and no opinions or prognostications should be delivered as a result of the deliberations of the consultants; which have not been concurred in by the consultants at their conference.

Attending Physician Responsible.

Section 6.—The physician in attendance is in charge of the case and is responsible for the treatment of the patient.

Consequently, he may prescribe for the patient at any time and is privileged to vary the mode of treatment outlined and agreed on at a consultation whenever, in his opinion, such a change is warranted. However, at the next consultation, he should state his reasons for departing from the course decided at the previous conference. When an emergency occurs during the absence of the attending physician, a consultant may provide for the emergency and the subsequent care of the patient until the arrival of the physician in charge, but should do no more than this without the consent of the physician in charge.

Conflict of Opinion.

Section 7.—Should the attending physician and the consultant find it impossible to agree in their view of a case another consultant should be called to the conference or the first consultant should withdraw. However, since the consultant was employed by the patient in order that his opinion might be obtained, he should be permitted to state the result of his study of the case to the patient, or his next friend in the presence of the physician in charge.

Consultant and Attendant.

Section 8.—When a physician has attended a case as a consultant, he should not become the attendant of the patient during that illness except with the consent of the physician who was in charge at the time of the consultation.

Article IV.—Duties of Physicians in Cases of Interference.

Misunderstandings to be Avoided.

Section 1.—The physician, in his intercourse with a patient under the care of another physician, should observe the strictest caution and reserve; should give no disingenuous hints relative to the nature and treatment of the patient's disorder; nor should the course of conduct of the physician, directly or indirectly, tend to diminish the trust reposed in the attending physician. In embarrassing situations, or wherever there may seem to be a possibility of misunderstanding with a colleague, the physician should always seek a personal interview with his fellow.

Social Calls on Patient of Another Physician.

Section 2.—A physician should avoid making social calls on those who are under the professional care of other physicians without the knowledge and consent of the attendant. Should such a friendly visit be made, there should be no inquiry relative to the nature of the disease or comment upon the treatment of the case, but the conversation should be on subjects other than the physical condition of the patient.

Services to Patient of Another Physician.

Section 3.—A physician should never take charge of or prescribe for a patient who is under the care of another physician, except in an emergency, until after the other physician has relinquished the case or has been properly dismissed.

Criticism Should be Avoided.

Section 4.—When a physician does succeed another physician in the charge of a case, he should not make comments on or insinuations regarding the practice of the one who preceded him. Such comments or insinuations tend to lower the esteem of the patients for the medical profession and so react against the critic.

Emergency Cases.

Section 5.—When a physician is called in an emergency and finds that he has been sent for because the family attendant is not at hand, or when a physician is asked to see another physician's patient because of an aggravation of the disease, he should provide only for the patient's immediate need and should withdraw from the case on the arrival of the family physician after he has reported the condition found and the treatment administered.

When Several Physicians are Summoned.

Section 6.—When several physicians have been summoned in a case of sudden illness or of accident, the first to arrive should be considered the physician in charge. However, as soon as the exigencies of the case permit, or on the arrival of the acknowledged family attendant or the physician the patient desires to serve him, the first physician should withdraw in favor of the chosen attendant; should the patient

or his family wish someone other than the physician known to be the family physician to take charge of the case the patient should advise the family physician of his desire. When, because of sudden illness or accident, a patient is taken to a hospital, the patient should be returned to the care of his known family physician as soon as the condition of the patient and the circumstances of the case warrant this transfer.

A Colleague's Patient.

Section 7.—When a physician is requested by a colleague to care for a patient during his temporary absence, or when, because of an emergency, he is asked to see a patient of a colleague, the physician should treat the patient in the same manner and with the same delicacy as he would have one of his own patients cared for under similar circumstances. The patient should be returned to the care of the attending physician as soon as possible.

Relinquishing Patient to Regular Attendant.

Section 8.—When a physician is called to the patient of another physician during the enforced absence of that physician, the patient should be relinquished on the return of the latter.

Substituting in Obstetric Work.

Section 9.—When a physician attends a woman in labor in the absence of another who has been engaged to attend, such physician should resign the patient to the one first engaged, upon his arrival; the physician is entitled to compensation for the professional services he may have rendered.

Article V.—Differences between physicians.

Arbitration.

Section 1.—Whenever there arises between physicians a grave difference of opinion which cannot be promptly adjusted, the dispute should be referred for arbitration to a committee of impartial physicians, preferably the Board of Censors of a component county society of the American Medical Association.

Article VI.—Compensation.

Limits of Gratuitous Service.

Section 1.—The poverty of a patient and the mutual professional obligation of physicians should command the gratuitous services of a physician. But endowed institutions and organizations for mutual benefit, or for accident, sickness and life insurance, or for analogous purposes, have no claim upon physicians for unremunerated services.

Conditions of Medical Practice.

Section 2.—It is unprofessional for a physician to dispose of his services under conditions that make it impossible to render adequate service to his patient or which interfere with reasonable competition among the physicians of a community. To do this is detrimental to the public and to the individual physician, and lowers the dignity of the profession.

Contract Practice.

Section 3.—By the term 'contract practice' as applied to medicine is meant the carrying out of an agreement between a physician or a group of physicians, as principals or agents, and a corporation, organization, political subdivision or individual, to furnish partial or full medical services to a group or class of individuals on the basis of a fee schedule, or for a salary or a fixed rate per capita.

Contract practice per se is not unethical. However, certain features or conditions if present make a contract unethical, among which are: 1. When there is solicitation of patients, directly or indirectly. 2. When there is underbidding to secure the contract. 3. When the compensation is inadequate to assure good medical service. 4. When there is interference with reasonable competition in a community. 5. When free choice of a physician is prevented. 6. When the conditions of employment make it impossible to render adequate service to the patients. 7. When the contract because of any of its provisions or practical results is contrary to sound public policy. The phrase 'free choice of physician,' as applied to contract practice, is defined to mean that degree of freedom in choosing a physician which can be exercised under usual conditions of employment between patient and physician when no third

party has a valid interest or intervenes. The interjection of a third party who has a valid interest or who intervenes does not per se cause a contract to be unethical. A 'valid interest' is one where, by law or necessity, a third party is legally responsible either for cost of care or for indemnity. 'Intervention' is the voluntary assumption of partial or full financial responsibility for medical care. Intervention shall not proscribe endeavor by component or constituent medical societies to maintain high quality of service rendered by members serving under approved sickness service agreements between such societies and governmental boards and bureaus and approved by the respective societies.

Each contract should be considered on its own merits and in the light of surrounding conditions. Judgment should not be obscured by immediate, temporary or local results. The decision as to its ethical or unethical nature must be based on the ultimate effect for good or ill on the people as a whole.

Commissions.

Section 4.—When a patient is referred by one physician to another for consultation or for treatment, whether the physician in charge accompanies the patient or not, it is unethical to give or to receive a commission by whatever term it may be called or under any guise or pretext whatsoever.

Direct Profit to Lay Groups.

Section 5.—It is unprofessional for a physician to dispose of his professional attainments or services to any lay body, organization, group or individual, by whatever name called, or however organized, under terms or conditions which permit a direct profit from the fees, salary or compensation received to accrue to the lay body or individual employing him. Such a procedure is beneath the dignity of professional practice, is unfair competition with the profession at large, is harmful alike to the profession of medicine and the welfare of the people, and is against sound public policy.

Chapter IV.

The Duties of the Profession to the Public.

Physicians as Citizens.

Section 1.—Physicians, as good citizens and because their professional training specially qualifies them to render this service, should give advice concerning the public health of the community. They should bear their full part in enforcing its laws and sustaining the institutions that advance the interests of humanity. They should cooperate especially with the proper authorities in the administration of sanitary laws and regulations. They should be ready to counsel the public on subjects relating to sanitary police, public hygiene and legal medicine.

Public Health.

Section 2.—Physicians, especially those engaged in public health work, should enlighten the public regarding quarantine regulations; on the location, arrangement and dietaries of hospitals, asylums, schools, prisons and similar institutions; and concerning measures for the prevention of epidemic and contagious diseases. When an epidemic prevails, a physician must continue his labors for the alleviation of suffering people, without regard to the risk of his own health or life or to financial return. At all times, it is the duty of the physician to notify the properly constituted public health authorities of every case of communicable disease under his care, in accordance with the laws, rules and regulations of the health authorities of the locality in which the patient is.

Public Warned.

Section 3.—Physicians should warn the public against the devices practiced and the false pretensions made by charlatans which may cause injury to health and loss of life.

Pharmacists.

Section 4.—By legitimate patronage, physicians should recognize and promote the profession of pharmacy; but any pharmacist, unless he be qualified as a physician, who assumes to prescribe for the sick, should be denied such countenance and support. Moreover, whenever a druggist or a pharmacist dispenses deteriorated or adulterated drugs, or substitutes one remedy for another designated in a prescription, he thereby forfeits all claims to the favorable consideration of the public and physicians.

Conclusion.

While the foregoing statements express in a general way the duty of the physician to his patients, to other members of the profession and to the profession at large, as well as of the profession to the public, it is not to be supposed that they cover the whole field of medical ethics, or that the physician is not under many duties and obligations besides those herein set forth. In a word, it is incumbent on the physician that under all conditions, his bearing toward patients, the public and fellow practitioners should be characterized by a gentlemanly deportment and that he constantly should behave toward others as he desires them to deal with him. Finally, these principles are primarily for the good of the public, and their enforcement should be conducted in such a manner as shall deserve and receive the endorsement of the community.

With reference to the Tampa Hospital, they were not taken from the register within one year from July 22, 1938. I do not think that at any time subsequent thereto the Tampa Hospital was removed from the register.

Recross-examination.

Q. Is it not true that those doctors who had been engaged in Tampa in rendering medical services to these fraternal clubs, to these groups with a Latin population, and who had been on the staff of the Tampa Municipal Hospital, were required to resign from the staff of the Tampa Municipal Hospital?

A. I couldn't say whether they were required to resign; I think they did resign.

Q. The hospital dropped them as a result of your activities?

A. I think not.

Q. The hospital dropped them; you will agree with that?

A. Yes.

Q. Now, before they did resign you did withdraw registration from that hospital?

A. No, sir.

Q. Didn't your Council drop the Tampa Municipal Hospital for this reason and only reinstate them because a suit for injunction was filed?

A. I think not.

Q. First didn't the Tampa Municipal Hospital drop these doctors in question? From its staff?

A. That is my recollection.

Q. And didn't those doctors go into court and obtain an injunction preventing that discharge?

A. Something of that sort occurred; I am not certain of the details.

Q. And after that didn't you notify that hospital that your council was withdrawing its approval from that hospital?

A. Not within the period covered by this investigation.

Q. Oh, well, now, I didn't ask you that. I asked you if after that time, didn't you then take action and withdraw them from your approved list?

A. It was quite a long time after that.

Q. Specifically, wasn't it February 17, 1940, and isn't that a copy of your letter to the hospital (Gov. Ex. 641)?

A. That is a correct copy of the letter of February 17, 1940.

Q. (Reading Gov. Ex. 641):

"MY DEAR MR. MCKAY:

"The Council on Medical Education and Hospitals, meeting on February 11, voted to withdraw approval for the training of interns at the Tampa Municipal Hospital. As a result of the changes which have been made recently in the organization of the medical staff, the Council is convinced that the hospital is no longer capable of fulfilling the requirements fixed by this Council and ratified by our House of Delegates."

Weren't the changes in the organization of the medical staff referred to this reinstatement of those doctors produced by their injunction suit?

A. That was one of the changes.

Q. Was that one of the changes referred to in this letter, which caused you to withdraw approval for interne training at that hospital?

A. The changes referred to in the letter were that the entire staff of the hospital had been changed and within six months thereafter had undergone an almost complete change again, so that there was no continuity of service or supervision over the training of internes.

Q. Weren't the changes that you referred to in this letter, and which caused you to act in withdrawing that ap-

proval, the fact that these doctors whom you had objected to were reinstated on the staff of the Municipal Hospital by order of the equity court down there?

A. That was not the only reason.

Q. That was one of them?

A. That was one of them.

Q. And wasn't the other one, the other change in the staff, that the rest of the staff members of the AMA, withdrew from the Tampa Hospital when these doctors were reinstated by the court?

A. No, I think not.

Q. Is there any truth in what I have asked you?

A. I know that a good many of the members of the Society did stay on the staff.

Q. And a good many left?

A. Some of them.

Q. I just want to ask him about this other change, whether the other change in the medical staff which you refer to in that letter was not the change that resulted when a group of AMA doctors left that hospital because these other doctors to whom you objected had been reinstated by the Court?

A. I couldn't say whether that was the reason why they left, but all I can say is there was a complete change in the staff of the hospital at one period, and within six months a complete change again, and we notified the hospital that if they couldn't keep a staff more regularly than that we couldn't depend on it to carry out our educational program.

Q. But there was a substantial change in the personnel of the staff shortly after the injunction suit was decided?

A. There were two almost complete changes of the staff within six months or so.

Q. Didn't you understand that there was a connection between those changes and the injunction action?

A. I have forgotten just where the injunction action came in.

Q. The principles of medical ethics were introduced through your testimony. Do you recall that provision of the principles which says that contract practice may be unethical if it is contrary to sound public policy?

A. Yes.

Q. Do you understand that to mean that the American Medical Association is the judge of what is sound public policy in connection with contract practice?

A. The American Medical Association would have to judge how to apply that phraseology in their consideration of the evidence.

Q. Doesn't it usually act in that regard through the Judicial Council?

A. Yes.

Q. And don't you know it to be the fact that the Judicial Council has consistently failed to define what they mean by "contrary to sound public policy"?

A. I am not aware of that.

Q. Aren't you aware of these transactions in the Judicial Council which I now read you, from Exhibit 137:

These proceedings were November 12, 1937—

"The secretary presented the request of Dr. Kinsley Roberts, Medical Director of the Bureau of Cooperative Medicine of the Cooperative League of the United States of America, for definitions of 'solicitation,' 'advertising,' and 'contrary to good public policy.'

No definite action was taken by the Council but there was no objection to giving Doctor Roberts the definition of 'solicitation' as adopted by the Judicial Council. The Judicial Council has never defined the terms 'advertising' or 'contrary to good public policy.' "

Didn't you know that?

A. No, I never heard that before.

Q. Did you ever see a definition of "sound public policy" as used in circumscribing the proper limits of contract practice?

A. I don't recall.

Q. As far as you know, the matter is completely within the caprice of the Judicial Council, without any standard to guide it as to what is or is not sound public policy?

A. I wouldn't say that, no.

Redirect examination.

I have never seen a definition of "sound public policy" in the law; I have never found it in the dictionary; and I don't know of anybody else who ever did. I have never looked for it.

Q. Why did the Council consider, if the Council did so, that a hospital which couldn't keep a staff longer than six months was such a hospital as couldn't remain on its approved list as those or as one qualified to train internes?

A. Because it is necessary, to carry out any kind of a system of training, to have the continuity in planning and execution of any training program to have constant and regular supervision, and any hospital that wasn't in a position to undertake the responsibility of doing that we felt was incapable of properly carrying out such a program.

HON. PAT McCARRAN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am Senator from Nevada. I identify a copy of an original letter received by me as a member of the Committee on Appropriations of the Senate from R. N. Elliott, Acting Comptroller General of the United States, dated December 16, 1937, as a correct copy, with exhibits lettered A to P, inclusive, as well as my letter of December 1, 1937, to Mr. Elliott (all of said documents being marked Def. Ex. 17). I identify a letter received dated September 22, 1937, from Howard Acton, Director of Public Relations, Federal Home Loan Bank Board (marked Def. Ex. 18). I identify a letter received by me from John H. Fahey of the Federal Home Loan Bank Board dated December 3, 1937 (marked Def. Ex. 19). I identify the report of H. R. 8837 made by Congressman Woodrum of the House Committee on Appropriations dated January 6, 1938. A copy of this report was furnished to each member of the Appropriations Committee of the Senate (Def. Ex. 20). I identify the transcript of the hearing before the subcommittee of the Committee on Appropriations of the Senate on H. R. 8837, as Def. Ex. 21.

THOMAS H. REAVIS, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am employed in the General Accounting Office as investigator and have been there for 15 years. I produce, under subpoena to the Comptroller General, certain docu-

ments, being a certified copy of a letter from the Comptroller General dated December 16, 1937, to the Honorable Pat McCarran, United States Senator, together with the exhibit attached thereto, marked Def. Ex. 22.

Mr. Lewin: Before you start with this witness, I would like to make an offer. Your Honor, I think I neglected to offer formally in evidence the letters and documents which were read in connection with Dr. Cutter's cross-examination.

The Court: That is so, but they have been read to such an extent by counsel that of itself puts them in evidence. If you want the record to formally indicate the admission of such documents you may give the stenographer a list of them.

The defendants objected to these documents on the grounds they were incompetent, irrelevant, immaterial, that no conspiracy had been proven, hearsay, and too remote in time and place.

Objection overruled and exception noted.

(Gov. Exs. 619-656, inclusive, were received in Evidence.)

DR. C. M. PETERSON, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I reside at Palatine, Illinois. I am secretary of the Council on Industrial Health of the American Medical Association. From April, 1930, to February, 1938, I was on the staff of the Council of Medical Education and Hospitals. I graduated from the medical school of the University of Minnesota in 1927; engaged in the practice of medicine at the clinic in Duluth, Minnesota. I practiced medicine privately in London, Minnesota, and did postgraduate work at the New York Postgraduate College and Hospital. When with the Council I investigated the educational program in hospitals for 7 or 8 years and personally visited between 150 and 200 hospitals, covering the entire country. In each instance when I made an examination an application was first filed by the hospital with the Council requesting approval. On receipt of this request application forms

were sent out together with the essentials governing the various kinds of approval. Such pamphlets set out were the same as Def. Ex. 12 and 13. On February 3, 1937, I received at the Council a letter from Dr. James A. Cahill (Def. Ex. 16) requesting approvals of residencies in surgery at Georgetown University Hospital and Providence Hospital. I answered that letter, sending applications for these residency approvals to be submitted on behalf of Georgetown and Providence Hospitals. After receiving back the applications, as soon as other arrangements could be made pertaining to other applications all over the country, I came to Washington in the early summer of 1937, and visited Georgetown, Providence, Washington Sanitarium, George Washington, and Columbia Hospitals. I examined Columbia, the Washington Sanitarium, and George Washington Hospitals as routine reinspections at the same time I examined Georgetown and Providence. On coming to Washington I received no particular instructions and was left largely to my own initiative. Dr. Cutter, no member of the Council, nor any other person in the AMA gave me any instructions pertaining to these examinations. After completing my examinations of the hospitals, I made reports on all hospitals I visited, which was routine procedure. Copies of the reports were sent to each individual hospital. Def. Ex. 23 is my inspection report on Providence Hospital; Def. Ex. 25 is my report on Columbia Hospital; Def. Ex. 27 on Washington Sanitarium; Def. Ex. 24 on Georgetown University Hospital and Def. Ex. 26 on George Washington University Hospital. The original of each of these reports was submitted to the Council and a copy was sent to each hospital. The reports covered a review of the internships, the staff organization, clinical material, out patient department, medical records, medical library, pathological service, teaching plan, interne committee, general medicine, surgery, obstetrics, special instructions, staff coverage, and in so far as Georgetown is concerned, a fellowship in dermatology, fellowship in medicine, and a fellowship in radiology. The summaries to these reports were for purposes of bringing to the attention of the administrative staff of the hospitals the findings that are most prominent and which need to be brought to their attention most forcibly, in other words, the deficiencies needing correction.

I recite in my reports the deficiencies that needed to be corrected in certain of the hospitals inspected, and stated

that in the event the recommendations for corrections of deficiencies were not followed or pursued, generally speaking, they would not be given the approval sought. The general effect of nonobservance of matters brought out in the summary on the Council would be that the Council would withhold or withdraw approval. In my opinion if the recommendations I suggested were followed each hospital would be improved. At the time I made my inspections and reports I knew nothing of Group Health. When I made my examinations and inspections of the hospitals I heard nothing and discussed nothing with anyone about Group Health. I hadn't discussed Group Health with Dr. Cutter or with anyone else at all in any way, shape, or form, and Group Health never entered my mind in my inspection of the Washington hospitals, or in any of the recommendations which made up my reports. None of my correspondence subsequent to my reports has anything to do with Group Health.

The general plan was for the inspector to prepare a letter of transmittal for Dr. Cutter's signature. If other correspondence should be had following the letter of transmittal, ordinarily Dr. Cutter would conduct it. I should say that Dr. Cutter conducted the correspondence with the Washington hospitals. I dictated Gov. Ex. 239, dated August 21, 1937, to Providence Hospital. After I dictated it I sent it to Dr. Cutter for his signature. The custom with reference to initials on letters prepared for Dr. Cutter's signature is to place his initials followed by the stenographer's, and underneath to place mine, showing that I dictated the letter.

Q. Doctor, I want to draw your attention to this letter which you wrote to Providence Hospital. It encloses, as it states, a copy of your notes and recommendations, referring to opportunities available for internes at Providence Hospital, and you say:

"Please refer this statement to the officers of the staff and membership of the Executive Committee.

You will recognize that there are several factors that are not in conformity with the Council's regulations governing internship approval."

What were those factors? You say there are several factors not in conformity with the Council's regulations.

A. Those factors were the ones enumerated in the summary of the report.

Q. The ones that your attention has just been brought to?

A. Yes.

Q. And which you just explained to us?

A. Yes.

Q. (Reading):

"It is a matter of great interest to this office, therefore, to learn whether the recommendations enumerated at this end of the report are acceptable or not. As matters stand now we believe quite likely that when this statement is submitted to the Council at its regular meeting early in November internship approval will be withdrawn."

To what were you referring as the basis of your belief when you dictated that letter, that internship approval would be withdrawn from Providence?

A. Here, again, I referred to the recommendations contained in the summary of the report regarding conditions I found in Providence Hospital.

Q. Doctor, in that report you also made an analysis of the staff to which your attention was directed as I went over the report with you. Do you recall?

A. Yes.

Q. I will ask you whether or not the analysis of the membership of the staff had anything to do with the paragraph which you have just read?

A. No; it had nothing to do with that.

Q. To what, exclusively, did that paragraph refer when it said that interne approval would very probably be withdrawn?

A. To the statements in the summary regarding the matters that I found below par in respect to interne training.

Q. (Reading):

"Similarly the application for approval of a residency in surgery is held in abeyance pending adjustment of the present situation."

To what did you refer by the phrase "present situation"?

A. Those factors which I felt were still below the standard recommended by the Council regarding the training of a surgical resident.

Q. You called attention in the concluding paragraph of your letter to the Mundt Resolution, so-called, did you not?

A. Yes, sir.

Q. Why, Doctor, was the Mundt Resolution referred to in this particular letter?

A. We were calling the attention of all hospitals to the Mundt Resolution as we inspected them in relationship to our inspection program.

Q. What difference was there in your conduct when writing this particular letter to Providence Hospital and to other hospitals you inspected at the same time?

A. We followed this same procedure.

Q. With reference to all hospitals?

A. All hospitals approved for internship and residencies.

I dictated the letters accompanying the transmittal of my reports to George Washington, Georgetown, Providence, Washington Sanitarium, and Columbia Hospitals. In calling the attention of these five hospitals I inspected to the Mundt Resolution no connection was had or intended concerning Group Health, as I hadn't even heard of Group Health at all when I wrote the letters.

Report on inspection of Providence Hospital, Def. Ex. 23; report on inspection of Georgetown University Hospital, Def. Ex. 24; report on inspection of Columbia Hospital, Def. Ex. 25; report on inspection of George Washington Hospital, Def. Ex. 26 and report on inspection of Washington Sanitarium and Hospital, Def. Ex. 27, were offered and received in evidence.

Def. Ex. 23, the report and inspection of Providence Hospital, was read from as typical of Def. Exs. 24, 25, 26, and 27, to jury, as follows:

Providence Hospital ought to be in excellent position to provide high-grade internships. Like all hospitals with essentially a private clientele, there are difficulties in establishing an active and progressive teaching program. The following recommendations are made:

1. It is suggested that the details of appointment and supervision of interns be assigned to a separately organized intern committee which will report to the Executive Committee or to the whole staff, as seems more desirable. Such a committee should consider adopting the following activities:

a. Regular physical examination of interns at the outset of service including a flat plate of the chest.

b. Adoption of regulations which will require that each intern maintain a record of the work he performs subject to check by the residents and countersigned by the chief of service. Advantages are that obvious deficiencies in experience can be corrected and the hospital authorities may recommend or promote on a merit basis.

c. Meeting should be held periodically with the interns to settle difficulties as they arise and to determine whether all interns are receiving a well balanced clinical training.

d. Development of additional teaching exercises would improve the internship considerably, such as:

1. Improved contact with clinical pathology and a controlled experience in that department and by the development of weekly clinical pathological conferences.

2. Development of a clinical society by the interns themselves where they may invite clinicians to discuss subjects the interns select themselves.

At present there is no tradition for good records in Providence Hospital.

Statistical reviews should be improved through recording by services the number of admissions, discharges, condition on discharge, infections, consultations, deaths, and autopsies. Where organized hospital services exist, it is usually preferable to submit service statistics at departmental conferences rather than before the entire staff.

The autopsy record is susceptible of great improvement. One hundred autopsies a year should not represent great difficulty. Coroner's autopsies are not considered as useful educationally unless it is possible for house officers to witness the procedures and suitable protocols are available for the hospital files."

It was on the basis of the recommendations contained in Def. Ex. 23 that I advised Providence Hospital (Gov. Ex. 239) that there were several factors not in conformity with

the Council's regulations governing internship approval, and, finding the hospital below par, I stated it was "quite likely that when this statement is submitted to the Council at its regular meeting early in November internship approval will be withdrawn," and "similarly the application for approval of a residency in surgery is held in abeyance pending adjustment of the present situation." Nothing in the reports or in the letters transmitting the reports to the hospitals had any connection at all with Group Health.

Cross-examination.

By Mr. Lewin:

As was customary in all reports, in my reports on the Washington hospitals I reported on staff memberships. This was not done pursuant to the Mundt Resolution.

Q. Do you know anything about this minute of the meeting of the Council on Medical Education and Hospitals held February 15, 1936, with regard to the resolution of the House of Delegates adopted at Cleveland? The Mundt Resolution was adopted at Cleveland, was it not?

A. I believe so.

Q. (Reading): "That physicians on the staffs of hospitals approved for interne training by the Council be limited to members in good standing of their local medical societies. It is suggested that in making reports on interne hospitals the Council's inspectors include an analysis of staff affiliations; that is to say, that they indicate which are fellows of the AMA, which are members and non-members. Such a report sent to the superintendent of the hospital would have a good effect."

Were you not familiar with that?

A. I believe I attended that meeting of the Council; yes.

Q. Would you say now that the reason you were required to report on the staff memberships when you inspected these hospitals was because of the Mundt Resolution?

A. Our principal approach to the staff analysis was in relation to the character of men who were to be responsible for the training of internes.

Q. Wait a moment. Did you go into the character of the individual members of the staff, or did you simply go into the question of whether or not they were members of your Society?

A. We obtained staff lists of the hospitals at the time we visited them and referred them to the list we had in our own office regarding their membership in the AMA.

Q. Did you study and report on the individual characters of the staff members?

A. The individual characters?

Q. Yes.

A. We took into consideration memberships in other societies as well, particularly special societies.

Q. Did you take into consideration the membership on the staffs of any of these five hospitals in societies other than the AMA? Will you look at those reports, please?

A. In connection with George Washington Hospital it appears that the staff, for example, is made up of the faculty of George Washington University Medical School, which would be a factor in its favor, as far as experience in teaching is concerned. I do not see any analysis of the staff here in this report. At Georgetown the analysis refers to membership and affiliation and non-membership in the American Medical Association.

Q. I did not ask you that. I asked you whether you analyzed the affiliations of staff members with other societies than the AMA and whether you reported on them.

A. Yes. I call attention to certain of the executive and visiting staffs being professors, associate professors, assistant professors in Georgetown Medical School.

At Columbia Hospital I call attention to the proposal for the development of eligibility to certification by the American Board of Obstetrics and Gynecology.

Q. What is that?

A. That is a certifying agency which, through a system of examinations, establishes the competency of a man in the specialty of obstetrics or gynecology.

Q. Is it in connection with the AMA?

A. Yes. They have representatives on the Examining Board from the appropriate section of the AMA.

Q. Is it confined to AMA members?

A. Membership in the AMA is one prerequisite for certification.

Q. I want to know what reports you made upon staff affiliations in societies other than the AMA.

Mr. Richardson: He has told you.

Mr. Lewin: He has told me about some professorship at local medical schools.

By Mr. Lewin:

Q. Have you not?

A. Yes.

Q. Is that all?

A. And the matter we have just discussed about special certification.

Mr. Leahy: Go ahead through the others, Doctor.

The Witness: In respect to Washington Sanitarium, the hospital itself had some specific rule regarding staff appointment which I do not recall at the moment; and in respect to Providence Hospital no other affiliation is mentioned, as I read this now, other than the American Medical Association.

By Mr. Lewin:

Q. You were interested, you say, in reporting on the membership or non-membership in the AMA because you were interested in the character of the men who were instructing the internes; is that right?

A. Yes.

Q. And you confined your study of their character to ascertaining whether or not they were members or non-members of the AMA. That is what that means, does it not?

A. If you will include that certain references are made to other affiliates.

Q. And those are the references that you have given, that some were professors in some of the medical schools?

A. Yes, sir.

Q. What is your testimony now, since I read you this minute of your Council, as to whether or not your purpose of studying and reporting on staff affiliations was connected with the Mundt Resolution and grew out of the Mundt Resolution?

A. I can say this speaks for itself.

Q. What does it speak? Are you in agreement with it? Did it grow out of the Mundt Resolution or didn't it? You testified to the contrary a moment ago. Does it speak correctly for itself?

A. This does not quote the resolution as such.

Q. Does it refer to the Mundt Resolution or not? It says "the resolution adopted at Cleveland with regard to staff membership."

A. I should say that it referred to the Mundt Resolution.

Q. Then your testimony would be that your practice in reporting on affiliations with the AMA directly grew out of the Mundt Resolution, would it not?

A. As regards this action, yes.

Q. As regards your action in making these reports, yes; is not that correct?

A. I thought you said that it grew out of this statement.

Q. I asked you whether your action in making these reports on the five Washington hospitals as to staff affiliations with the AMA did not grow directly out of the Mundt Resolution?

A. Yes.

J. FRANCIS MOORE, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am employed by the Home Owners Loan Corporation as secretary to the Board, and have held such position since November, 1939. I identify the papers comprising Def. Exs. 48, 49, 50, 50A, and 57 as official records of the Home Owners Loan Corporation.

DR. CHARLES GORDON HEYD, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I reside in New York City and have been a practicing physician there since 1909, with an office at 116 East 53d Street. I received an A. B. degree from the University of Toronto in 1905, graduated from the University of Buffalo Medical School in 1909, served four years as an interne and medical resident at the New York Post-Graduate Hospital and Medical School, received my degree of Doctor of Sciences from Temple University, was professor of surgery in the medical school at Columbia and attending surgeon in the New York Post-Graduate Hospital. I was consulting surgeon, Women's Hospital, in New York; Dover Hospital in New Jersey; Greenwood Hospital in Connecticut and Rockaway Hospital in New York City.

I was president of the AMA in 1936 and 1937, and am a former vice-president of the American College of Surgeons. I served for 23 months in the service during the World War, 21 of which were with the A. E. F. equipping hospitals, and was commanding officer of Mobile Hospital No. 7. In November of 1937 I became a member of the Council on Medical Education and Hospitals of the AMA, which Council consists of seven members excluding the secretary, and have been since. The function of the Council is primarily to educate the people to improved medical service by the improvement in medical schools and the improvement of the quality of medical services in hospitals. The Council inspects medical schools and hospitals only when invited to do so, as it does not investigate a hospital unless requested by that hospital. About 800 to 1000 hospitals have been inspected on request. The AMA maintains three divisions of hospital registration. Hospitals that desire listing in the register of hospitals of the AMA, which is done without inspection; hospitals which seek inspection and approval for the training of internes, and hospitals which seek inspection and approval for the teaching and training of residents. The training of an interne is a basic thing in a general and broad preliminary way. A residency is a continuation of the training of an interne and may vary from two to four years. The inspection of medical schools by the Council embraces a survey of the physical plant, the equipment and laboratories, and an examination into the particular qualifications and ethics of teachers, and their affiliations, and a study of its library facilities. In other words, the Council by the effect of public education has reduced the number of medical schools from 161 to 66. The Council claims no jurisdiction over medical schools or hospitals and makes no effort to control the administration of either the medical schools or hospitals. The purpose of the Council is to keep good medical schools and hospitals going, to assist them, but only through education and the value of public opinion.

The Council exercises no control over the staff of a hospital, and the selection of staffs is in the board of trustees or directors, all as provided in the charters or licenses. In private hospitals in order to get on the staff a doctor makes an application, presents his credentials, and evidence of any special training he may have. He may obtain a position in the out-patient department, or clinic, and as his

experience and ability demonstrate, may progress and take care of a ward, and then, upon his merit, ability and service may, in the course of time, become a senior member of the staff. The tendency of hospitals in admitting doctors to their staffs is to ask such doctors to become members of their local medical society, as the hospital feels a man seeking the responsibility of an appointment on the medical staff must have the endorsement of his professional colleagues. He gets that by being a member of his local society, though there is hardly any hospital in which there are not doctors not members of local societies. A doctor who has not been accorded privileges to practice in a hospital has no right to practice in that hospital. The reason being that an M. D. degree and a license to practice in the state does not authorize a doctor to walk into a private hospital and take care of his patients. That would spell hospital and medical chaos. That couldn't be and isn't done. A doctor must affiliate himself with a hospital and, by proper training, get the right to operate in that hospital. The mere fact that a doctor is a member of his local society, of itself, does not warrant his being selected to the staff. In passing on applicants hospitals usually inquire into the ethics, character, standing, training, experience, natural aptitude, and competency of the doctor seeking privileges. Usually, in passing on the application for privileges, the doctor's whole professional life will be examined. The application will be referred to a committee on appointments of a medical board, and from there to the board of trustees for action. If his record is clear; if he is ethical and enjoys the due regard of his colleagues in the community, he probably will get the appointment. By being ethical is meant first that the doctor is a gentleman and follows the Golden Rule and the Ten Commandments. The American Medical Association has a code of ethics, and all doctors, regardless of whether they are members of the local society or not, have a code to follow, and take an oath to observe the Hippocratic oath, which is a condensed form of everything that is decent and right living in the conduct of man with his fellows.

I attended every meeting of the Council since November, 1937. I am familiar with the Mundt Resolution. That resolution has had very little effect on the deliberations of the Council. I am a strong believer in the Mundt Resolution and believe it is a step for the benefit of the com-

munity, although possibly a bit premature, as public opinion, hospital minds, and medical minds, are not prepared for it. Basically in the Mundt Resolution is implicit a benefit in medical services and hospital services for the community, because the whole progress of medicine has been based upon development in the medical society. A changing era is faced in medical practice, individuals are living longer and medical practice in future is going to be preventive medicine, and the source of graduate instruction, and the new things in medicine will come from the local medical society as the repository of new advances in medicine. It is the ideal of medicine and service to the community to have every doctor reeducated by contact with the center where medical knowledge originates and is dispersed, and that is implicit in the Mundt Resolution. The resolution expresses the policy of the House of Delegates that staff membership should be limited to members who are in good standing with local county medical societies, not the AMA. The Council has given a large measure of deliberation and debate to the resolution, and how to bring this ideal expectation before the medical profession. It instructed its secretary, Dr. Cutter, to send the resolution to the 6,000 registered hospitals. After that had been done the feeling, I think, was that we had accomplished the main purpose that was intended in giving a wide diffusion to a principle of the House of Delegates. When a hospital asks the Council to inspect it, after the inspection has been made and the report sent back, a copy of the Mundt Resolution is sent to that hospital for informative purposes, with the questions, "What is your reaction to this? Is it possible of attainment?" The Council has never taken the attitude that the Mundt Resolution should be used as a threat, and has never taken the attitude that before a hospital can be approved it must conform or adopt the principle of the Mundt Resolution. Hundreds of communications along the line of Def. Ex. 14 have been sent to various hospitals. In sending out the Mundt Resolution no threat was intended to any hospital. When a hospital seeks approval the Council believes they have the right to indicate under what circumstances that hospital will be approved, but at no time is there any coercion or any threat that if you don't have a staff of men who are all members of your medical society you will not be approved. That would be stupid and absurd.

The selection of a staff in an interne hospital is important because hospitals seeking approval are going to train the doctors who are going to take care of the people ten years hence. The Council prescribed the "Essentials of a Registered Hospital," Def. Ex. 11, and that lists a minimum that the institution should comply with before holding itself out as prepared to take care of the sick. In sending the "Essentials" and the Mundt Resolution to the hospitals the Council had in mind one purpose, and one purpose only, and that was the improvement of medical service to the better service of the community, and that is all. The economic status of a doctor and his position is of no moment whatsoever in that concept.

When I attended the first meeting of the Council in November, 1937, I had never heard of Group Health. Group Health was never discussed at any meetings of the Council. The actions of the Council with reference to hospitals seeking approval, and the Mundt Resolution, had no connection with Group Health. At no meeting of the Council did they seek to restrain Group Health or trade in the District of Columbia. In sending out the Mundt Resolution and the "Essentials of a Registered Hospital," no intention was had to interfere with the business of Group Health. No action taken by the Council since November, 1937, had anything to do with Group Health. A doctor may become a member of a local society if he has a license to practice, is of good moral character, and will subscribe to the code of ethics of the Medical Society. Ethics are important to the profession as they place a high standard for the individual and aid him in being a useful member of the society, a gentleman, honorable and upright. On becoming a member of a local society a doctor agrees to abide by a code of rules and ethics and is held accountable under that code and those rules for violations thereof. If a member is charged with violating the code of rules of the society charges are presented against him; he usually appears before a committee. If the decision is adverse he may appeal to the state medical society where the question is reviewed. If the decision in the state society is against him, he may appeal to the Judicial Council of the AMA. If the decision of the Judicial Council is against him he may appeal to the House of Delegates for a hearing. If the decision of the House of Delegates is against him he can appeal to the courts of the land for redress.

DR. CHRISTOPHER G. PARNALL, a witness for the defendants.

Direct examination.

By Mr. Leahy:

For over 16 years I have been administrator of the Rochester General Hospital in Rochester, New York. I graduated from the University of Michigan Medical School in 1904, and the academic school in 1902; practiced privately in Jackson, Michigan, for 12 years, and in the last three organized and was director of the Department of Public Health and Hospitals, was professor at the University of Michigan in administrative medicine and later director of the University Hospital. I am a consultant on hospital administration and am active in that capacity in various places. I am past president and trustee, also a member of the American Hospital Association. I am a former Commissioner of Public Welfare for the City of Rochester; a Fellow of the American College of Physicians, a member of the American Public Health Association, the American Medical Association, and the Monroe County Medical Society. The American Medical Association, representing organized medicine, has a distinct interest in the administration of hospitals because they exist primarily to enable the profession to render medical service to the citizens. A beneficial effect accrues to the hospitals throughout the country by reason of inspections and examinations by the AMA, and this is reflected in better coordination of medical work in the hospitals, better direction and supervision of the educational work of hospitals, particularly in relation to internes and resident physicians and directly affords better service to the patient. A hospital is examined by inspectors of the AMA occasionally or periodically to check on the work it is doing. My signature appears on Gov. Ex. 254. The signature on the original of the carbon dated December 1, 1936 (Gov. Ex. 246) doesn't correspond with the signature of Dr. Cutter as I know it. The letter in 1936 of September 8 referred to in Gov. Ex. 246 doesn't bear the signature of Dr. Cutter as I am familiar with it.

Mr. Lewin: May I ask a qualifying question? Have you ever seen Dr. Cutter sign his name?

The Witness: No.

Mr. Lewin: Have you any special knowledge of his handwriting?

The Witness: I am not a handwriting expert, but I am familiar with his signature because I have received various communications from him.

Mr. Lewin: Do you know which of these two is his signature and which is not?

The Witness: I don't think either one is.

Mr. Lewin: You don't think either one is?

The Court: They are in evidence?

Mr. Leahy: No, September 8th is not. I want to offer it now. That is why I have given it to him.

My attention was for the first time called to the Mundt Resolution in the letter of September 8, 1936 (Def. Ex. 28). Then the following question was asked:

"What effect did the Mundt Resolution have so far as you were concerned on the approval of your hospital?"

The Government objected on the ground that the witness's testimony should be confined to Washington and that the success of the restraint in Rochester is not in issue. The objection was sustained and exception noted.

Def. Ex. 28 was received in evidence and read to jury as follows:

Sept. 8, 1936.

"Dr. Christopher G. Parnall, Med. Dir., Rochester General Hospital, Rochester, New York.

"DEAR DOCTOR PARNALL:

We are pleased to submit a copy of Dr. F. H. Arestad's report of the present status of intern training at Rochester General Hospital. Similar documents have been sent you in the past and we hope this will prove a useful addition to your files. Will you kindly refer this statement to Dr. Prince and his committee as well as other staff members interested in these matters.

It is very pleasant to know that training of house officers continues on the same high level noted formerly and that approval of these positions by the Council is amply merited. It will be our purpose, therefore, to continue to publish in our lists that Rochester General Hospital is approved

for intern training and for residencies in surgery and medicine.

Special approval for mixed residencies is no longer necessary, in accordance with the Council's policy of assigning full credit for such services in any hospital previously approved for the general internship.

May we call your attention to a recent resolution passed by the House of Delegates of the American Medical Association:

Resolved, That it is the opinion of the House of Delegates of the American Medical Association that physicians on the staffs of hospitals approved for intern training by the Council on Medical Education and Hospitals should be limited to members in good standing of their local county medical societies and that the House of Delegates requests the Council on Medical Education and Hospitals to take this matter under advisement.

What possibility, if any exists for observance of the principle laid down in this resolution?

Very truly yours, Wm. D. Cutter."

I don't think I replied to Def. Ex. 28 before I received Gov. Ex. 246 on December 1, 1936. I replied to the request for comments on the Mundt Resolution in Gov. Ex. 246 by sending Gov. Ex. 254 to Dr. Cutter. Gov. Ex. 254 was read as follows:

Dec. 17, 1936.

"Dr. William D. Cutter, Secretary,
American Medical Association,
535 North Dearborn Street,
Chicago, Illinois."

DEAR DR. CUTTER:

Relative to the resolution of the House of Delegates favoring a rule by the Council on Medical Education and Hospitals limiting membership on a hospital staff to members in good standing of local county societies; I am in somewhat of a quandary as to just what to say. Personally I feel that members of hospital staffs should be members of their local county societies. However, I do not believe in any inflexible rule setting up such a standard of eligibility.

I suggested to our Board of Directors a change in the By-Laws relating to staff appointments, requiring that un-

less otherwise voted by the Medical Board, no physician would be eligible to the Visiting and Associate positions of the staff unless he is a member in good standing of the county medical society. When this proposal was referred to the Medical Board for an opinion, I was rather surprised to find that its members—all members of the county medical society—were unanimously against it. Their feeling was that the county medical society should stand on its own merits and that it should offer enough of itself so that practically every member of a hospital staff would seek membership, and that everything that savored of compulsion would subject Medicine to the same thing that arouses the resentment of doctors to the actions and attitudes of non-medical organizations.

It was pointed out that only a small percentage of the staff were not members of the county society and that most of this group were younger men, most of whom will shortly join the county society. I am sending you a list of our staff appointments for the hospital year 1935-36, with the non-members checked. You will note that allowing for duplications, excluding the Honorary and Consulting divisions, there are 128 members, 118 of whom are members of the county society, leaving 10, or 8%, who are not. Even on the Honorary inactive staff of seven members, all but one being over 75 years of age, there is only one who is not a member of the county society. Of the 22 on the Consulting Staff, the only two who are not members of the county society are the Professor of Bacteriology at the University and a bacteriologist who is not an M. D. Our Staff represents practically one-fourth of the active membership of the county society. On its membership are the President of the New York State Medical Society; the President, the President-Elect and the Secretary of the Medical Society of the County of Monroe.

I personally have been a member of the American Medical Association continuously for over thirty years and two of my sons are members of county societies.

Under the circumstances, as far as support of organized medicine is concerned, could the House of Delegates very well hold that the Rochester General is an unfit place for the training of interns?

With warmest personal regards and wishes for a Merry Christmas and a successful New Year, I am,

Sincerely yours, C. G. Parnall."

Following this I received Gov. Ex. 255. No action was taken by the Council on Medical Education and Hospitals of the AMA other than Gov. Ex. 255, following my letter to them stating that all of the members of our hospital staff were not members of the local medical society. Nothing further was said about approval of our hospital by the Council. I received no further communication with reference to approval of our hospital. Our rejection as noted in Gov. Ex. 254 had no effect whatsoever upon the approval of our hospital as a suitable hospital for training internes.

Q. As President of the American Hospital Association, and as a consultant in the American Hospital Association, have you ever heard of approval for internes training of any hospital in the United States depend upon either the rejection or the adoption of the Mundt Resolution, or the principle contained therein?

Mr. Lewin: Just a minute that is the same question.

The Court: Objection sustained. I think that would broaden the field. It opens up a collateral issue. If I permitted that, it would, perhaps, bring in every hospital in the country.

Mr. Leahy: We don't wish to do that, your Honor.

Objection sustained and exception allowed.

Gov. Ex. 255 was read to the jury as follows:

"December 21st, 1936.

Dr. C. G. Parnall,

Medical Director;

Rochester General Hospital,

Rochester, New York.

MY DEAR DR. PARNALL:

In response to your letter of December 17th, let me express my appreciation of your information and your comment on the affiliation of your staff members with your medical society.

The intention behind the resolution referred to was to smoke out from the staff of some hospitals certain men who were regarded as objectionable but whom the hospital felt a delicacy in removing.

I notice in the figures which you have kindly supplied, that your staff enjoys a very fortunate position with regard

to the support of your professional organization and that apparently any object which the Council might have had in view has already been anticipated.

Cordially yours,"

There is operating at Binghamton, a hundred miles from Rochester, a plan of the Endicott-Johnson Company; there is a prepayment plan recently started under the auspices of the Erie County Medical Society, operating in Buffalo County; there is also some bakery plan operating. Also the Agfa plan, involving group practice and prepayment, and all of these prepayment plans are served by members of the American Medical Association and members of the local medical societies.

Cross-examination.

By Mr. Kelleher:

The Erie County Medical Society plan is connected with a group hospitalization plan and includes everybody in the medical society, and the doctors are paid fees. The Agfa plan is sponsored by a group with the approval of the medical society. I am not familiar with the plans and cannot give details.

I received the original of Gov. Ex. 255. It is my impression that it bears Dr. Cutter's signature.

Redirect examination.

Under the plan in force under the supervision of the Erie County Medical Society the members paid in advance by monthly payroll deductions.

Recross-examination.

Where members participate in this plan and pay monthly dues, that is ethical. Where there is an arrangement for deduction of dues from their salaries, it is considered ethical.

Redirect examination.

The only question involved in any plan, on the ground of the ethical character of the plan, is whether or not it can deliver a good quality of medicine in the public interest.

DR. WILLIAM C. WOODWARD, a defendant and a witness for the defendants.

Direct examination.

By Mr. Leahy:

I now reside in Washington. Prior to January, 1940, I resided in Chicago for 17 years. I am a native of Washington, D. C., and was born here in 1867. I graduated from Washington High School in 1885, obtained a medical degree from Georgetown University in 1889, obtained a law degree from Georgetown University in 1899, and an LL.M. in 1900. I am a member of the Bar of the District Court of the United States for the District of Columbia, the Supreme Court of the United States, the State of Massachusetts, and the State of Illinois; I have an honorary degree of LL.D. from Georgetown University, 1925. I was Coroner of the District of Columbia in 1893 and 1894 and health officer for the District from 1894 until 1918. I was secretary to the medical supervisors, the examining and licensing board for the District for ten years. I was in charge of public health for the Public Health Service here in Washington for 25 years, as health officer. I was Health Commissioner for the city of Boston from 1918 to 1922, exercising legislative as well as executive powers. In 1922 I became Director of the Bureau of Legal Medicine and Legislation of the AMA, resigning that office in December, 1939, when I retired. I taught medical jurisprudence in the law and medical schools of Georgetown University; the medical school of George Washington University; the medical school of Howard University; the medical and law schools of Loyola University. I was professor of medical jurisprudence in both the medical and law schools of the University of Chicago. I am a Fellow and ex-president of the American Public Health Association, an ex-president and honorary life member of the Conference of State and Territorial Health Authorities and Boards of Health, a member of the Medical Society of the District of Columbia, an honorary member of the American Veterinarian Medical Society, a member of the International Association of Milk Sanitariums, and a member of the Royal Society of Public Health and Hygiene of London.

In 1922, under the authority of the resolution of the House of Delegates, I organized the Bureau of Legal Medicine and

Legislation and was its first head. The bureau has charge of matters of legislation and legal medicine of general interest to the profession. I kept informed as to the various organizations in those fields, coordinated public opinion and the opinion of the medical profession and generally as the resolution says, represented the AMA. The bureau analyzed all cases reported in the national reporter system of Medical-Legal interest, and analyses were published from time to time. Information concerning matters of medical-legal interest was furnished the profession. Legislation was advocated to correct existing evils.

Group Health was first called to my attention in the Verbrycke letter of May 29, 1937 (Gov. Ex. 441-A). I received a copy of the Ireland letter of March, 1937 (Gov. Ex. 295), which I filed and took no action thereon. After receiving the Verbrycke letter, and after talking with Dr. West about it, I decided to come to Washington to ascertain the facts.

Q. What was there, Doctor, in the letter of May 29, 1937, from Dr. Verbrycke, U. S. Exhibit 441-A, which was so different from the letter of General Ireland which we have just mentioned, that caused you to think that you should come to Washington to make an investigation?

A. Dr. Verbrycke's letter represented the situation, frankly, as one of national interest, and the view of the organization, particularly the Bureau of Legal Medicine, was that with respect to matters of national interest the American Medical Association should take the initiative. With respect to state matters, or a case in the District of Columbia, we allowed the state or District organization to take the initiative and we cooperated and advised.

Q. The letter of May 29, 1937, from Dr. Verbrycke to Dr. Woodward reads as follows (reading Gov. Ex. 441-A):

"I am writing this semi-officially as chairman of the Economic Committee of the District of Columbia Medical Society to you as chairman of the Legislative Council of the AMA. We are faced with a new problem which would seem to be more far-reaching than a purely local difficulty. Our immediate concern is local, but two factors make it a national concern.

The Home Owners Loan Corporation has organized a cooperative undertaking called Group Health Association, Inc. They propose to have their own set-up for medical care of themselves and families with full time personnel, and

Dr. Brown, formerly of the Veterans Bureau, has been appointed Medical Director with a reputed salary of \$8,000. He is at the present time trying to organize a staff. The Home Owners Loan Corporation has about two thousand employees here and a number of regional offices through the country. This is not a great deal in itself, but we are informed that this undertaking is financed by a government loan."

The words "this undertaking is financed by a government loan" are underscored. (Continuing reading):

"That the President has given his approbation and is so interested in it that if successful he plans to recommend similar organizations through all departments.

"You, knowing conditions in Washington, will realize that if this movement should spread to the ultimate, the private practice of medicine would be practically destroyed, and it is conceivable that the experiment started here would spread through the entire country, as it is entirely in line with what the President is said to want. We feel that two of the factors mentioned above bring this problem directly to the door of the AMA. I am asking if you will not come here to confer with us and advise us as to best methods of approach. Coming as close to the meeting at Atlantic City it seems as if the present were a very opportune time.

"With kindest regards, I am,

Sincerely yours,"

Late in May I came to Washington to attend to other matters, and on arrival had a conversation with Dr. Verbycke. I learned that Group Health was supposed to be based on an examination into health conditions among employees of HOLC. Accordingly, I first went to the United States Public Health Service, but they knew nothing whatever of any such investigation. Then I went to the United States Employees' Compensation Commission and was informed by the secretary that they had heard of no such investigation. Then I went to the offices of HOLC and learned that HOLC was not making loans to health service corporations. After seeing several persons there I attempted to see one of the Governors of the Board, but was told he was in conference, and was referred to Mr. Zimmerman, to whose office I went. There I identified myself as a representative of the AMA eager to obtain information on Group Health for the purpose of discussing it at the meet-

ing of the AMA at Atlantic City. I had previously learned, accidentally, that there was a contract of some sort between HOLC and Group Health, so I asked to see a copy of the contract. Whereupon Mr. Zimmerman said he would have to get legal advice, or consult counsel. Mr. Zimmerman then went out, returned, and advised me that he had been instructed by counsel not to show a copy of the contract to me, but that Dr. Brown would have it at Atlantic City. At Atlantic City I didn't see Dr. Brown and was unable to obtain a copy of the contract. On my return I tried but was unable to see Mr. Zimmerman. About two weeks later I obtained a copy of the articles of incorporation of Group Health Association from the Recorder of Deeds in Washington at my request or through our representative in Washington, John H. Hayes. I carried on a general investigation, was back and forth between Chicago and Washington, met several representatives of the Medical Society, attended one committee meeting with Dr. Leland in July, 1937, and one meeting of the Society, for the purpose of ascertaining what I could concerning Group Health and its relation to the Government. I was particularly disturbed by the articles of incorporation as I found them, and was eager to learn just how rapidly GHA was developing and how it was developing either here or elsewhere. The articles of incorporation disturbed me because they covered all officers and employees of the United States Government everywhere in all branches of the Government, except commissioned officers and enlisted men in the Army and Navy, indicating that the organization was a national organization of large scope. During June, July, August and September I endeavored to assemble reliable information regarding Group Health for the purpose of reporting it to the board of trustees of the AMA.

Q. Was that in pursuance of any policy of the American Medical Association with reference to collecting data or information?

A. It is a part of the duties of the Bureau of Legal Medicine and Legislation and is defined in the resolution under which it was created.

Q. Do you recall how much information you were able to get from any source during the period of the summer of 1937, with reference to GHA?

A. I got, of course, information regarding the articles of incorporation, and from time to time word came as to

the set-up, it may be, but I could get no specific information except as I got hold of a copy of the constitution and by-laws and a copy of a blank application for membership and a few things of that sort, all of which forms the basis of a report that I made.

Efforts were made to obtain a copy of the contract between HOLC and Group Health Association through various Congressmen, but they failed.

I wrote Gov. Ex. 198. (Defense counsel read Gov. Ex. 198 to the jury.) I received Gov. Ex. 199 in reply. (Defense counsel read Gov. Ex. 199 to the jury.) I had no information with reference to the meeting of the District Medical Society on June 30th other than that contained in these two letters. "Let me suggest that Mr. Hayes attended that meeting and made a report, possibly: I am not sure. If so, the letter is in the record." I received and read Gov. Ex. 180. (Defense counsel read Gov. Ex. 180 to the jury.) The meeting of July 14, 1937, referred to in this letter was a meeting of one of the committees of the District Medical Society that Dr. Leland and I attended. I supplied the District Medical Society with a copy of the articles of incorporation of Group Health, as they requested.

I obtained a preliminary announcement headed "Private and for Confidential Circulation only" from Dr. Verbruyke on my visit in the latter part of May, 1937. I received Gov. Ex. 45 at my residence in Chicago and it was addressed so as to lead me to believe that it was sent to me as an associate member of the District Medical Society and not to me in my official capacity as an officer of the AMA. (Defense counsel read Gov. Ex. 45 to the jury.) I took this letter to the office and left it there as a part of the office records, thinking it might be of interest in regard to our inquiries relative to Group Health.

I wrote Gov. Ex. 187. (Defense counsel read Gov. Ex. 187 to the jury.) I met Dr. McGovern frequently during my visit to Washington during that period. On my frequent visits sometimes I would meet him on one occasion; sometimes more often. I received Gov. Ex. 188 in reply to my letter (Gov. Ex. 187). (Defense counsel read Gov. Ex. 188 to the jury.) The Bureau of Legal Medicine and Legislation did not express any wish or hope to be represented at any of the meetings of the Executive Committee

of the District Medical Society. I don't recall having conferred with Dr. Cutter with reference to the letters just read.

Dr. Leland and I again came to Washington in November of 1937 to attend a meeting of the District Medical Society with reference to Group Health. I wrote Gov. Ex. 202. (Defense counsel read Gov. Ex. 202 to the jury.) During this period I was assembling information for the purpose of writing my report to the Board of Trustees. I advised the District Medical Society to procure counsel and be guided by the advice of counsel.

I wrote Gov. Ex. 190. (Defense counsel read Gov. Ex. 190 to the jury.) I received a reply. Up to the time of this letter I had received practically no information concerning Group Health except I had gotten what purported to be a copy of the constitution and by-laws of the corporation. I received Gov. Ex. 84 in response to Gov. Ex. 190. (Defense counsel read Gov. Ex. 84 to the jury.) I had no correspondence directly with the subcommittee of the Executive Committee or any member of it.

I did not do anything "in an effort to formulate a suitable and effective policy with respect to combatting the activity of Group Health Association" nor to my knowledge did the AMA. The Board of Trustees meeting was held on September 15, 16 and 17, 1937. At the time of this meeting the information concerning Group Health which I had was rather extensive and had been embodied in a report I had submitted under date of September 1. The pamphlet marked "Private—for Confidential Circulation only" (an attachment to Gov. Ex. 609) I got from Dr. Verbrycke at the time of my visit to him. I had not received a copy of the contract for which I was searching up to the date of the last letter read.

The report to the Board of Trustees which I made under date of September 1, was, after severe editorial cutting, published in the Journal of the AMA on October 2, 1937. Gov. Ex. 294 is a draft of the original report, with the addition of one page on September 7, and various additions and deletions. I received Gov. Ex. 111 which was referred by Dr. West to me. (Defense counsel read Gov. Ex. 111 to the jury.) Gov. Ex. 293 is a copy of the Journal article. This is the official journal of the AMA. The AMA also publishes nine or ten other journals.

Gov. Ex. 284 was written by Dr. Fishbein and sent to me. Defense counsel read Gov. Ex. 284 to the jury as follows:

"September 13, 1937

"DR. WOODWARD:

I am returning herewith the duplicates of the report on the HOLE. The original is being edited for use in the Organization Section of the Journal."

I received Gov. Ex. 186. Mr. Hayes had been for many years the Washington correspondent representing the Association generally, picking up news and matters of that sort, to forward to the Association. Since for some years past he has been connected directly with the Bureau of Legal Medicine and Legislation for the purpose of procuring for us essential data that we need in Washington, I asked him to collect information for me. (Defense counsel read Gov. Ex. 186 to the jury.) I received Gov. Ex. 182. I did not formally communicate the contents of these letters from Mr. Hayes to Drs. West, Fishbein, Cutter and Leland. If I communicated the contents at all, it came about in the case of contacts that I would make with them throughout the day. If there was any matter of importance that had to be—policy that had to be determined, I would confer with Dr. West, but generally there was nothing calling for conferences of that sort. (Defense counsel read Gov. Ex. 182 to the jury.) I received Gov. Ex. 183. Defense counsel read Gov. Ex. 183 to the jury as follows:

"August 25, 1937

"Dr. Woodward, Chicago.

"DEAR DR. WOODWARD:

"Following the transmittal of my letter to you of yesterday on the Group Health Association, Inc., I awoke this morning to read in the Washington papers the enclosed articles from the Herald and Post.

"Thereupon I called at the office of Mr. W. F. Penniman, Assistant General Manager for District No. 6, of the Home Owners' Loan Corporation. He was absent from his office from 2 p. m. until 4:30 p. m. but I did see him at the latter hour.

"I referred to the statements in the papers and asked him if these statements were correct. He stated that

they did not come from him and he did not know whence they did come, and that they were not correct. He did not care to amplify or be specific on any statement of facts—other than to say that 'we are in the embryonic stage and our plans are not fully worked out.'

"During my long wait in his office to see him, I asked the young lady in the outer office if she could supply me with one of the blanks used by employees of the Home Owners' Loan Corporation in applying for membership in the Group Health Association, and she replied that she had filled out her application but that she did not have another. I asked Penniman if he could supply one of these blanks to me, and his reply was that 'he did not have any of the blanks.' I will try other sources tomorrow, and will send blank to you if one can be secured.

"To my request for a list of the members of the medical staff, he replied that 'that the list was not yet ready'.

"I talked later to Mr. Howard Acton, in charge of Press Relations for the Home Owners' Loan, and suggested that something official ought to be prepared at once to supply newsmen instead of articles such as appeared today in Washington papers, which apparently are not prepared with official approval.

"It may be advisable for you to delay publication of your article until these fellows are compelled to come out in the open and let the world know definitely what they are doing.

Very truly yours,

John F. Hayes."

I wrote Gov. Ex. 184. Defense counsel read Gov. Ex. 184 to the jury as follows:

"DEAR MR. HAYES:

I thank you very much for your letter of August 25 relative to Group Health Association, Incorporated.

I am not sure but that the situation described in your letter calls for an earlier publication by the American Medical Association concerning Group Health Association, Incorporated, rather than a later one—that is, if those who control our publication machinery deem it wise to publish anything.

I enclose herewith a draft of the article that I prepared with a view to publication. I have not yet prepared a closing section. You can see, I believe that I have very well anticipated everything that is going on in Washington in connection with this matter, even to Filene's part in the matter, in some cases having the facts before me and in other cases drawing deductions from these facts. Was not Fahey a labor lawyer in Boston before he assumed his present position in Washington?

Will you not examine this draft and return it to me at the earliest possible moment with any comments and criticisms you see fit to make? Please regard it as confidential.

Yours truly,"

Mr. Fahey is chairman of the Board of Governors of the HOLC. Edward A. Filene was a retired department store owner in Boston and the founder of the Twentieth Century Fund and was its president at that time.

I wrote Gov. Ex. 185. It is dated August 30th and I sent it to Mr. Hayes. Gov. Ex. 185 was read to the jury as follows:

"DEAR MR. HAYES:

I am informed that although Twentieth Century Fund, Inc., of which Mr. Edward A. Filene is President, was interested in the organization of the cooperative medical service in Washington out of which Group Health Association, Inc., grew, the Fund subsequently withdrew its support. The group that was promoting the Group Health Association, Inc., is said to have been so radical in its ideas and so unbusinesslike in the conduct of its affairs that Twentieth Century Fund, Inc., would have none of it.

"Dr. Fishbein suggests that if we could have some lay person from Washington not identified in any way with the American Medical Association write to Mr. Filene about the matter, he might get something of interest; not to write about the withdrawal of the Twentieth Century Fund but to write for information concerning the present movement, for instance:

"DEAR MR. FILENE:

"The local press in Washington has recently published articles about a cooperative medical service organized here

in Washington referred to as Cooperative Health Association, Inc. In one of the articles, it was stated:

'The Twentieth Century Fund of New York, backed by Edward A. Filene, Boston merchant, philanthropist, also is aiding the corporation, chartered under the District of Columbia laws.'

"I am therefore turning to you for information concerning the practicability and value of Group Health Association, Inc. Obviously, inquiry of the government officials who are responsible for the organization can lead only to laudatory answers, for unless they thoroughly believe in the plan they can certainly not have undertaken to underwrite it up to \$100,000. Moreover, these men, as I understand it, are all novices in this field and Twentieth Century Fund, Inc., is not. Twentieth Century Fund, Inc., and you as its President, are however, I assume, in positions from which the plan can be viewed with unbiased minds and you will naturally keep yourselves informed concerning the activities of the organization in view of the support you have given it—if you have given it the support the newspapers say you have. I shall appreciate it very much if you let me have your frank opinion regarding the expediency of a person of limited means identifying himself with this organization. What is the likelihood of its defaulting in its obligations? What can one expect of it in the way of competent medical and hospital services? Etc.?"

"Of course, Mr. Hayes, the foregoing is only a suggestion. You may have no one whom you could ask to write such a letter to Mr. Filene. If so, do not hesitate to say so. You may be able to frame a much better letter than I have suggested. What I have written is intended only to give a definite idea as to the line of thought that seemed to run through Dr. Fishbein's mind.

"Incidentally, Dr. Fishbein thought that he could not run my article on Group Health Association, Inc., until next week, so you will not see it in the Journal for September 4.

"Yours truly, "Director."

I received Gov. Ex. 203. (Defense counsel read Gov. Ex. 203 to the jury.) I saw Gov. Ex. 103. The text is very familiar to me. It was written by Dr. West. Defense counsel read Gov. Ex. 103 to the jury as follows:

"June 23, 1937.

"Mr. Thomas A. Hendricks
Executive Secretary
Indiana State Medical Association
Home-Mansur Building,
Indianapolis, Indiana.

"DEAR MR. HENDRICKS:

"I am very greatly obliged to you for your letter of June 22, for the memorandum attached to it and for the copy of (quote) 'A Plan for a Cooperative Medical Service on a Periodic Payment Basis for Federal Employees and Their Families in Washington.' (Close quote.)

"While we already had a copy of this 'plan' and practically all of the information submitted in the memorandum attached to your letter, we are nevertheless grateful to you for sending us the material that accompanied your letter and especially for the information pertaining to the small group in Washington that seems to be acting as a steering committee for the organization of cooperative medical services among various governmental departments. We had not been able to secure this particular piece of information.

"We have known for two or three months that a movement has been started to organize medical service plans for governmental employees. We have made very diligent efforts to ascertain all the facts and we are still persisting in those efforts.

"Since the Atlantic City Session Doctor Woodward has been in Washington for a large part of the time and has had interviews with officials of the HOLC, the Resettlement Administration, the Brookings Institute and numerous others. The one thing that we have tried very hard to secure is a copy of the contract to be entered into between the cooperative and their members. Our own efforts as well as the efforts of persons in high official position in Washington have been altogether unavailing and we have not been able to secure a copy of the contract nor any specific information about its provisions.

If you can succeed in securing any additional information, we shall appreciate it if you will pass it on to us just as we have fully appreciated your helpfulness in connection with other matters in the past.

"Very sincerely yours,"

Gov. Ex. 106 came to my attention. It is dated June 25, 1937, and is on the letterhead of Dr. Herbst. (Defense counsel read Gov. Ex. 106 to the jury.) I never got in touch with Dr. Herbst and never discussed GHA or HOLC with him.

I saw Gov. Ex. 105 which is a letter dated June 28, 1937, and written by Dr. West to Dr. Herbst in Washington. Defense counsel read Gov. Ex. 105 to the jury as follows:

"DEAR DOCTOR HERBST:

I am greatly obliged to you for your letter of June 25. We have been considerably perturbed over the scheme that is being promoted under the auspices of the Home Owners' Loan Corporation and have made very earnest efforts to develop dependable information through authentic sources. While we have secured some very interesting information, we have not been able to secure other information of an absolutely essential character. The way in which this matter has been promoted in Washington is rather typical. We are grateful indeed to you for the information offered in your letter. I shall hope to see you when you are in Chicago.

With most cordial good wishes, I am,

Very truly yours,"

I don't know whether I ever saw Gov. Ex. 115 which is a telegram from Dr. West to Dr. Hooe dated November 4, 1937. (Defense counsel read Gov. Ex. 115 to the jury.) The District Medical Society or one of its committees authorized Dr. Hooe and Dr. McGovern to come to Chicago to confer with representatives of the AMA concerning GHA. Gov. Ex. 116 is addressed to Dr. West and states: "Will arrive in Chicago 8:20 A. M. November 6. R. Arthur Hooe." I was present at this conference. Also present were Dr. West, Dr. Leland and Miss Niehoff.

I wrote Gov. Ex. 179. (Defense counsel read Gov. Ex. 179 to the jury.) I wrote Gov. Ex. 201 to Dr. McGovern. (Defense counsel read Gov. Ex. 201 to the jury.) Gov. Ex. 117 is the report of the conference held on November 6 in Chicago. I wrote Gov. Ex. 191 on December 3, 1937, to Dr. Thomas E. Neill. Defense counsel read Gov. Ex. 191 to the jury as follows:

"I understand that counsel for the Medical Society filed with the District Attorney and Corporation Counsel sev-

eral days ago its brief concerning the status of Group Health Association, Inc., and its relation to the Home Owners Loan Corporation and affiliates. I had rather expected that I would receive a copy of that brief, but none has yet arrived. Is there any reason why a copy should not be sent to me? If a copy of the brief can be sent to me, please have it sent as promptly as possible and let me know at the same time whether or not I am at liberty to print it or to discuss it publicly in the Journal or elsewhere. If I am not at liberty to do so immediately, please see that I am informed as soon as the brief is released to the public. If it is possible to get for me a copy of the brief filed by the Home Owners Loan Corporation and affiliates on behalf of its illegitimate child I would like to have a copy of that brief also, together with instructions as to publicity and release."

I received Gov. Ex. 192 from Dr. Neill. Defense Counsel read Gov. Ex. 192 to the jury as follows:

December 6, 1937.

"MY DEAR DR. WOODWARD:

Your letter of December 3 has been received, and I have just talked to the counsel for the Medical Society who tells me that he thinks he can have copies of the briefs for you, the one drawn by counsel for the Medical Society of the District of Columbia and the one drawn by counsel for the Home Owners Loan Corporation. As soon as he hands them to me I will have them sent you immediately.

Our Executive Committee, together with general counsel and others appointed by me to work with him, meet tonight with two members in question to decide whether or not we will dismiss them from the Medical Society of the District of Columbia for violation of our constitution and by-laws. I will also bring up at the meeting the subject of whether or not there is any reason that you should not be at liberty to print and discuss the briefs publicly in the Journal or elsewhere.

With best wishes."

I wrote Gov. Ex. 196. (Defense counsel read Gov. Ex. 196 to the jury.) I received Gov. Ex. 197 in reply to Gov. Ex. 196. (Defense counsel read Gov. Ex. 197 to the jury.) I wrote Gov. Ex. 204. (Defense counsel read Gov. Ex. 204

to the jury.) I wrote to the state societies in Maryland and Virginia and called their attention to the situation and suggested there was something for them to do.

I dictated Gov. Ex. 200. This was a report to Dr. West on the results of Dr. Leland's and my visit to Washington to confer with a committee of the District Medical Society relative to Group Health. This refers more accurately to data that had been accumulated up to that time rather than a result of the conference. I assume it was the result of the conference but I see no definite reference to the conference. It tells everything I knew about Group Health at the time I wrote it. (Defense counsel read Gov. Ex. 200 to the jury.)

Page 18 of Gov. Ex. 135 came to my attention. Defense counsel read from Gov. Ex. 135 to the jury as follows:

June 29, 1937.

"Dr. Bloss moved that the editor and the secretary and general manager be authorized to proceed to inform the profession of the country as to the efforts of the H.O.L.C. to enter into the practice of medicine and as to the present status of the proposal to organize cooperatives by the Government. Dr. Hayden seconded the motion and it was carried.

Dr. Hayden moved, and the motion was seconded by Dr. Bloss and carried, that Drs. Woodward and Leland be requested to go to Washington to see what they can learn and to try to advise the Medical Society of the District of Columbia if that society is willing to accept advice."

My writing of the Journal article had to do with motion of Dr. Bloss.

Q. What purpose had you in writing the article which appeared on October 2, 1937, in the Journal?

A. The editor and the secretary and general manager were called on to inform the profession generally of what the situation was, and I wrote a factual article for their guidance in preparing any article that they might publish if they decided to publish anything. I had the facts and they did not. I was giving them the facts in an available form.

Q. You have told us several times that you and Dr. Leland were here on the 14th day of July, 1937. What connection, if any, did your trip to Washington and your meet-

ing with a committee of the District of Columbia Medical Society on July 14, 1937, have with the second motion, to wit, that of Dr. Hayden, seconded by Dr. Bloss?

A. My recollection is that the report to Dr. West that has just been read showed the results of that visit to Washington by Dr. Leland and me.

Q. Was it in accordance with the motion which I have just read to you, of Dr. Hayden, seconded by Bloss, that you come here to the District of Columbia to meet with that committee?

A. It was.

The following portion of Gov. Ex. 135 also came to my attention. Defense counsel read from Gov. Ex. 135 as follows:

"Home Owners Loan Corporation, Group Health Association, Inc., Group Medical Service Plan.

"The following paragraph from a communication which Dr. West received from a physician in Washington, D. C. was read:

"The Group Health Service affair of the Home Owners Loan Corporation has already been incorporated, and our Executive Committee had a meeting with some of their representatives last night, and it certainly looks bad. It was brought out that it is possible for them to borrow money from the Home Owners Loan Corporation whenever necessary at any time for any purpose in regard to the Health problem. It was also brought out that there are about 200 branches scattered throughout the United States which maintain emergency rooms with a nurse which are directly under the central office here in Washington. Just what is going to come out of the whole affair is impossible to predict at this time, but there are going to be some conferences in an attempt to go along with this outfit if it is possible to do so and retain our faces."

"Dr. Woodward reported information secured from a Washington physician over the telephone and by letter concerning this matter and there was considerable discussion as to what the action of the American Medical Association should be concerning the activities of the HOLC and also concerning the proposal of the Medical Society of the District of Columbia to organize its own cooperatives.

"After the discussion the following actions were taken:"—

And then follow the two motions which I have already read to the jury.

I do not recall the meeting of the Board at all, but only its outcome in so far as it related to the bureau of which I had direction.

I wrote Gov. Ex. 177 as I had called on Dr. Verbrycke for a conference with respect to the situation in Washington in relation to Group Health.

Q. And how did you happen to make the memorandum, Doctor?

A. The memorandum involved a radical change in the policies of the Medical Society of the District of Columbia, and of the American Medical Association of such importance that I thought it desirable to have a record of the conference.

Q. Did you personally write up the memorandum yourself?

A. I did.

(Defense counsel read Gov. Ex. 177 to the jury.)

I attended a committee meeting of the District Medical Society in July, 1937, and also a meeting of the Society in November, 1937. Dr. Leland was with me at both meetings. Gov. Ex. 177 concerns the July meeting. At the November meeting the subject matter was primarily Group Health and the general matter of cooperatives. To the best of my knowledge and belief I came to Washington to attend that meeting (November, 1937). At that meeting I made a statement because I was there for that purpose, to advise the District Medical Society. I did undertake to advise the District Medical Society on that occasion. The advice I gave was to procure legal counsel and be guided by counsel's advice. That is the only advice I ever gave them, unless you can add the advice that I gave them at that November meeting, "to go slow and trust to their counsel."

At the Chicago meeting there were present Dr. West, Dr. Leland, Dr. McGovern, Dr. Hooe and myself. Dr. McGovern and Dr. Hooe were there by prearrangement. The conference lasted several hours. The subject discussed

was the relation between the District Medical Society and the AMA with respect to HOLC and its relation to Group Health. The representatives of the District Medical Society "were advised that the AMA would cooperate with them in anything they might do properly." I gave them advice with respect to two matters. "One was that in so far as any contemplated procedure, any procedure might be contemplated with respect to disciplinary measures against any member or members of the Society, care be taken to have all of the proceedings in regular form. The other was that they rely on their counsel for guidance in what they did as an association." "That, I think, is all I gave them."

I saw Gov. Ex. 152. Dr. West had been to Washington and when he returned he discussed with Dr. Leland and me the matter of Group Health and the District Medical Society and then he wrote that letter. (Defense counsel read Gov. Ex. 152 to the jury.) After this the meeting occurred at which Dr. Leland and I were present.

Gov. Ex. 292 is a copy of Dr. Verbrycke's report to Dr. McGovern which was sent to me by Dr. Verbrycke at my request. I may have discussed that with Dr. McGovern but it called for no direct action by the Bureau and I filed Gov. Ex. 292. (Defense counsel read Gov. Ex. 292 to the jury.) At the time of this letter, July 12, 1937, I had not been able to obtain a copy of the contract between HOLC and GHA, though I had tried to obtain a copy through Dr. Fenton, Dr. E. H. Cary, Senator McNary, and Representative Rayburn with absolutely no success.

Q. Doctor, there was a question which I wished to ask you in connection with the conference which you had with Mr. Zimmerman and about which we talked on Wednesday last. Did you at any time in the conference with Mr. Zimmerman say anything about that Group Health Association (quote) "was going to be given a going-over at the American Medical Association meeting?"

A. I used no language that is susceptible of that construction.

Q. Did you in that meeting say to Mr. Zimmerman (quote) "He," meaning you, "predicted that it," meaning the Group Health Association—or that that would be the end of Group Health Association?

A. I did not.

Q. Did you upon any occasion leave any word at Mr. Zimmerman's office?

A. I did.

Q. When?

A. It was on the occasion of my visit there on my way back to Chicago from the Atlantic City meeting. As Dr. Brown had not communicated with me in Atlantic City, and as I had not seen a copy of the contract there in Mr. Brown's possession, Dr. Brown's possession, as Mr. Zimmerman had promised me I should do, I called at Mr. Zimmerman's office to see again if I could see the contract. I was unable to see Mr. Zimmerman; he was reported to be in conference. I did see his secretary, and I left a message for him.

Q. What was the message?

A. The message was that his entire set-up was unlawful. I sent the original of Gov. Ex. 178 to Dr. Verbrycke. (Defense counsel read Gov. Ex. 178 to the jury.) I wrote the original of Gov. Ex. 194 to Dr. Joseph S. Wall, in Washington. I knew Dr. Wall for 40 years.

Defense counsel read Gov. Ex. 194 to the jury, as follows:

"November 5, 1937.

I thank you for your letter of November 1, relative to Group Health Association of the District of Columbia. I understand that a committee from the Medical Society of the District of Columbia is to be in Chicago on Saturday, November 6, to confer with respect to the situation, and I am glad of it."

I didn't write Gov. Ex. 153 and don't recall ever having seen it before. Gov. Ex. 136 is a photostatic copy of the minutes of the meeting of the Executive Committee of the Board of Trustees of the AMA referring to the meeting at which the representatives of the District Medical Society were present. (Defense counsel read Gov. Ex. 136 to the jury.) To the best of my knowledge I was not present at the Board meeting and took no part in the preparation of those minutes.

I wrote the original of Gov. Ex. 195 dated Dec. 8, 1937, to Dr. G. F. Simpson who was president of the Medical Society of the State of Virginia. "The Group Health Association, Inc., was not limited in its activities to the District of Columbia, but was a national organization prepared to

do business anywhere in the United States. The State of Virginia was particularly interested because of the over-running of the Association's—that is, the Group Health Association's physicians into the neighboring counties in Virginia. For that reason I called Dr. Simpson's attention to the matter and advised that he take action to do whatever might be proper to look after the welfare of the medical profession in his own state." (Defense counsel read Gov. Ex. 195 to the jury.) The Journal article of October 2, 1937, referred to was based on my report to the Board of Trustees, which, however, was substantially edited before publication. Gov. Ex. 189 is my letter transmitting my report to the Board of Trustees to which is attached a carbon copy of the report itself. The report was submitted on September 1, 1937, and I had been working on it since I received Dr. Verbrycke's letter of May 29, 1937, "But more particularly since the resolution of the Board of Trustees instructing Dr. West and Dr. Fishbein to acquaint the medical profession of the country with the facts concerning the situation." (Defense counsel read Gov. Ex. 189 to the jury.)

Gov. Ex. 294 is the original of my report. This contains notations or reference to supporting proof or the bases upon which my report was made. It also contains notations in the margin and changes in pencil and otherwise that were not made in the Bureau of Legal Medicine and Legislation. Gov. Ex. 293 contains the article which was substantially edited and printed therein. (Defense counsel read Gov. Ex. 293 to the jury.) My article on Group Health in the Journal was based on the certificate of incorporation of Group Health; but the reference to the contract was to the contract between HOLC and Group Health, which we had tried in vain to get a copy of or to see. Also the 19-page prospectus of Group Health marked "Confidential—For Private Circulation Only"; the code of the District of Columbia, 1929, title 5, chapter 7, Sec. 179; newspaper reports; the by-laws of Group Health; U. S. C. A., Title 31, Section 203; three decisions of the Comptroller of the Treasury; an opinion of the Attorney General; two New York State decisions; U. S. C. A., Title 5, Section 529; Section 595; and the Congressional Record of July 27, 1937, page 9939, and the by-laws of Group Health, Article 10, Sections 2, 3, and 5.

Q. Now, Doctor, to what did you refer when you stated: "The effect of the withdrawal from private practice of even one-half that number", which refers back to the figures 347,736 persons, "all of whom are able to pay for medical services, will materially disturb medical practice in the District of Columbia and react against public interest."

A. Under the setup of Group Health Association, Incorporated, the cost of medical services to the members of the organization was to be paid in large part by the United States Government. If GHA expanded its activities to a point where it took over a substantial part of the people of the District of Columbia—rich and poor alike,—the United States Government subsidizing its services—it is quite obvious that the various doctors in the District of Columbia, with their plants, with their experience, and everything else, would not be able to compete on a fair, honest basis; and that is when medical practice would be broken down by the subsidized practice, tending to destroy the medical profession.

Q. What did you mean when you said that it would react against the public interest?

A. Anything that destroys the medical profession anywhere reacts against the public interest.

Q. Now, Doctor, what was your authority for stating the population of the District at that time, as entered in your report or in your notation there?

A. I wrote, "the population of the District was 486,869 in 1930," citing as my authority the Chicago Daily News Almanac, 1937, page 130.

Q. I think you told us the source of your authority for the number of civilian employees of the United States Government here?

A. I believe I quoted the Congressional Record on that.

Q. Yes, that was the Congressional Record. Now, Doctor, to what did you refer when you stated in your conclusion: "Physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional status."

A. A physician's primary duty is always to his patient, except in times of active military service when a man might owe a greater duty to the service of his country; and when a physician makes a contract with a corporation in which he agrees to serve it, take his orders and instructions from it, or being always subject to the possibility of having to take

orders and instructions from it regardless of the welfare of the patient, he has lost professional caste and he is not serving his patients to the patient's best interests; that is, he may not be.

Q. Now, Doctor, again, upon what did you base your statement in the conclusion that: "Fees that are charged for medical services to the richer and more liberally paid employees are to be identical with those charged employees of the lowest grade, doing part-time work."

A. There is no provision in what were purported to be the by-laws of the association, and which were the by-laws of the association at that time, making any distinction in grading the dues to be paid by the members in any way in relation to their salaries. Even in the prospectus introduced in evidence, it is pointed out that it might be done so that the poorer, the more poorly paid employees would be paying a sum in proportion to their ability to pay,—they actually would be paying more—but there was nothing of that kind subsequently done. As I say, the lowest paid employee of HOLC was to pay exactly as much for the services received and the right to receive these services as was to be paid by the highest paid officer in the whole HOLC.

I conferred with many persons and referred to many sources in the preparation of my report. I talked with various members of the District Medical Society while preparing this report, as I was back and forth between Chicago and Washington, but the only connection was in according the information I might use in the preparation of the report. I don't know of anyone in the District of Columbia who had any direct knowledge that I was preparing such a report.

At the meeting of the District Medical Society in November, 1937, I spoke extemporaneously. I was asked to speak. What is reported in Gov. Ex. 37 is consistent with what I said on other occasions. My talk was a summary statement largely of the facts which were embodied in the Journal article of October 2, 1937. I again suggested that the Society have competent counsel and be guided by their advice and suggested the plan of laying the evidence before the corporation counsel and district attorney, showing them it is their duty to act, to counsel them to act, and if they will not act, appeal to Congress is the only course. I said that in my judgment, with the law as clear as it is, you will

have no difficulty in having proceedings instituted for the unlawful practice of medicine by a corporation and engaged in the business of insurance without having properly qualified. I "advised strongly that no further steps be taken until the Society has had the advice of counsel" and "it is not desirable to try a case in the newspapers."

Other than that mentioned, I had no connection with any meetings of the District Medical Society and I had no knowledge of the contents of their minutes. I had no knowledge of any correspondence written by or received by Dr. Cutter, Dr. West and Dr. Leland, other than that already mentioned and in addition the Ireland letter. Dr. Cutter had very little connection with my Bureau. I had no consultation or conference with Dr. Cutter concerning Group Health.

"I was frequently in conference with Dr. West. He was the responsible officer of the Association generally. At times in those conferences the matter of GHA would come up, undoubtedly, although at the present moment I could not state any particular conference in which the matter was discussed. With respect to Dr. Fishbein, who was operating the Journal, conferences were very much less frequent, and I recall no particular conference with him except in relation to the publication of the article that has been referred to."

With the exception of our visits to Washington, I know of no specific action that was taken as the result of a joint agreement between Dr. Leland and me. He might come in and ask a question, show me a letter, go back; I might do the same thing, with respect not only to Group Health, but with respect to many other matters relating to the practice of medicine, and things of that sort. Excepting the two visits to Washington and the meeting of November 6, 1937, I recall no specific conference relating to Group Health or anything of that sort. I had never heard any letter written by Dr. Leland or his staff before they were read to the jury here.

I did not conspire with anyone for the purpose of restraining trade in the District of Columbia or for the purpose of restraining Group Health, or its business, and my conduct and actions were confined to recommendations that any action, if taken against Group Health, be taken by the District Attorney and the Corporation Counsel. I never visited either officer. I did not conspire for the pur-

pose of restraining members of Group Health from obtaining by any lawful methods by cooperative efforts adequate medical care from doctors engaged in group medical practice on a risk-sharing prepayment basis. The only members or persons connected with Group Health I ever talked to was Mr. Zimmerman. I never attempted to prevent any person from joining Group Health or remaining a member thereof. I never conspired for the purpose of restraining doctors or surgeons, on the staff of Group Health or doctors not on the staff of Group Health, or the business of the Washington hospitals. The subject matter of the hospitals in connection with Group Health, never came to my individual attention, though the hospitals were mentioned while I was present at one of the meetings of the Medical Society, but I took no part in such discussions.

It was rumored that the Twentieth Century Fund of Edward A. Filene was behind the Group Health movement, and the annual reports of the Twentieth Century Fund disclosed that for a year, year and a half, possibly longer, the Twentieth Century Fund had been actively at work with the Home Owners' Loan Corporation to induce that corporation to take up some group health scheme. On examining the minutes of the Medical Society of April 6, 1938, I remember being present at that meeting. I had overlooked this. (Defense counsel read a portion of Gov. Ex. 37 to the jury.)

On December 24, 1937, I received a document dated December 21, 1937, marked Def. Ex. 30.

Thereupon Def. Ex. 30 was offered in evidence. It was objected to as immaterial, which objection was sustained. Exception was allowed the defendants. Def. Ex. 30, offered in evidence, reads as follows:

The Medical Society of the District of Columbia

1718 M Street

Washington

Dr. W. C. Woodward, Director, Bureau of Legal Medicine and Legislation, American Medical Association, 535 N. Dearborn Street, Chicago, Illinois.

"DEAR DOCTOR WOODWARD:

"Enclosed herewith for your information is copy of communication addressed to the Honorable Patrick A. McCar-

ran by R. N. Elliott, Acting Comptroller General of the United States.

"Very truly yours,

C. B. Conklin, M. D. Secretary."

"December 16, 1937.

"Honorable Patrick A. McCarran, United States Senate.

MY DEAR SENATOR:

"There has been received your letter of December 1, 1937, as follows:

"I am advised by Mr. Pennyman of the Home Owners' Loan Corporation and by others that a voluntary association has been effected from within the membership of the employees of the Home Owners' Loan Corporation, which voluntary association is known as the Group Health Association.

"I am also advised from several sources that this voluntary association, in cooperation with the Home Owners' Loan Corporation facility has diverted or is about to divert and use some \$20,000.00 a year for two years to finance this group organization, and that on the basis of this use of public moneys, a social health organization has been set up, which organization will depend, as I understand it, on voluntary contributions from the employees of the Home Owners' Loan Corporation.

"I respectfully request information from you as to what authority of law public funds have been diverted or are being used in the institution of this voluntary association. I will appreciate your full advice on the subject."

"The only funds lawfully available to the Home Owners' Loan Corporation after June 30, 1937, were appropriated by the Act of June 28, 1937, Public 171, as follows:

"Not to exceed \$30,000,000 of the funds of the Home Owners' Loan Corporation, established by the Home Owners' Loan Act of 1933 (48 Stat., p. 128), shall be available during the fiscal year 1938 for administrative expenses of the Corporation, including personal services in the District of Columbia and elsewhere; travel expenses, in accordance with the Standardized Government Travel Regulations and the Act of June 3, 1926, as amended (U. S. C., title 5, secs.

821-833); printing and binding; law books, books of reference, and not to exceed \$500 for periodicals and newspapers; procurement of supplies, equipment, and services; maintenance, repair, and operation of motor-propelled passenger-carrying vehicles, to be used only for official purposes; typewriters, adding machines, and other labor-saving devices, including their repair and exchange; rent in the District of Columbia and elsewhere; use of the services and facilities of the Federal Home Loan Bank Board, Federal home-loan banks, and Federal Reserve banks; and all other necessary administrative expenses; *Provided*, That all necessary expenses (including services performed on a force account, contract or fee basis, but not including other personal services) in connection with the acquisition, protection, operation, maintenance, improvement, or disposition of real or personal property belonging to the Corporation or in which it has an interest, shall be considered as non-administrative expenses for the purposes hereof; *Provided further*, That except for the limitations in amounts hereinbefore specified, and the restrictions in respect to travel expenses, the administrative expenses and other obligations of the Corporation shall be incurred, allowed, and paid in accordance with the provisions of said Home Owners' Loan Act of 1933, as amended (U. S. C., title 12, secs. 1461-1469).'

"An examination has been made in the records of the Home Owners' Loan Corporation, to determine in general the relationship of the corporation with the Group Health Association, Inc., formed and incorporated under the laws of the District of Columbia for the purpose of furnishing medical and hospital service to the employees of the corporation and other civil employees of the executive branch of the United States Government. Following is a list of all official documents examined, copies of which are attached, marked exhibits (a) to (p):

"(a) Opinion, dated December 23, 1936, and memorandum, dated December 28, 1936, by Horace Russell, General Counsel, Home Owners' Loan Corporation, on the legal authority of the corporation to aid its employees in the development of medical and hospital service.

"(b) Memorandum, dated March 1, 1937, by R. R. Zimmerman, submitting proposed plan of Group Health Asso-

ciation, Inc., prepared by R. V. Rickcord, of The Twentieth Century Fund, Inc.

“(c) Excerpt from minutes of a meeting of the board of directors of the Home Owners’ Loan Corporation, of March 2, 1937, regarding plan proposed by Mr. Rickcord.

“(d) Letter of March 11, 1937, by the General Counsel of the Home Owners’ Loan Corporation, submitting proposed resolution to the board, authorizing a contract between the corporation and the Group Health Association, Inc.

“(e) Resolution, dated March 17, 1937, adopted by the board of directors of the Home Owners’ Loan Corporation, approving form of contract and authorizing chairman of board to execute same on behalf of the corporation.

“(f) Certified copy of contract, dated March 22, 1937, entered into between the corporation and the Group Health Association, Inc., under which the corporation agreed to pay to the association \$40,000 over a period of two years, in consideration of certain medical benefits to its employees to be derived therefrom.

“(g) Excerpts from minutes of a meeting of the board of directors of the Home Owners’ Loan Corporation, dated March 22, 1937, nominating two trustees to the Group Health Association, Inc., pursuant to paragraph 4 of contract dated March 22, 1937.

“(h) Resolution, dated June 4, 1937, adopted by the board of directors, approving by-laws of the Group Health Association, Inc.

“(i) Resolution, dated June 7, 1937, adopted by the board of directors of the corporation, authorizing deduction to be made on corporation payrolls from salaries due employees who have executed assignment to the Group Health Association, Inc., for such medical service to be rendered to them by the association.

“(j) Resolution, dated August 10, 1937, adopted by the board of directors of the corporation authorizing a cash advancement of \$15,000 to the association, to be deducted from the second-year payments provided for in the contract of March 22, 1937, to make possible certain contemplated economies in the repair and lease of building and purchase

of professional and scientific equipment, also that the corporation will make available to the association such governmental facilities to purchase supplies and equipment at Government contract rates, repayment therefor to be made from such cash advancement granted to the association under the above-stated contract and this resolution.

“(k) Resolution, dated September 9, 1937, adopted by the board of directors, authorizing an additional \$5,000 cash advancement to the association in lieu of the second-year payments to be made by the corporation under contract of March 22, 1937.

“(l) Excerpt from minutes of a meeting of the board of directors of the corporation, dated October 1, 1937, pertaining to the appointment of a committee to draft letter on a plan for group medical service for employees of the board and agencies under its supervision.

“(m) Letter, dated November 16, 1937, to the Federal Home Loan Bank Board, by Assistant Secretary H. R. Townsend, submitting amended by-laws for approval by the board.

“(n) By-laws of Group Health Association, Inc., as revised on October 25, 1937, and approved by the board of directors of the corporation on November 19, 1937.

“(o) Assignment of pay form. Upon execution of this form the employee directs the corporation to make semi-monthly deductions from his pay for dues, which amounts are to be paid over to the Group Health Association, Inc.

“(p) Form of application for membership in the Group Health Association, Inc.

“The foregoing list covers all the important documents pertaining to the formation of the association, except the articles of incorporation filed in the office of the Recorder of Deeds of the District of Columbia.

“Pursuant to article 5 of the agreement of March 22, 1937, as amended by resolutions of August 10, 1937, and September 9, 1937, adopted by the board of directors of the Home Owners' Loan Corporation, there has been advanced to the Group Health Association, Inc., cash in the amount of \$30,000 which is recorded in the books of the corporation as 'Prepaid Expense'. Following is a record

of transfers of such funds under appropriation symbol and title '699-900, Expenses general, Working Fund';

Date of Voucher	Voucher No.	Check No.	Date of Check	Amount Paid
6/8/37	104162	480531	6/8/37	\$500.
7/2/37	119227	500225	7/2/37	500
8/2/37	125378	563676	8/2/37	1,000
8/18/37	126864	565551	8/18/37	23,000
9/18/37	128562	567376	9/18/37	5,000
Total Advanced				\$30,000

"In addition to the foregoing the corporation has purchased on behalf of the association certain supplies and equipment in the sum of \$7,357.65, the *net* amount of which is reflected on the books of the corporation as 'Accounts Receivable', representing the following transactions which are set out in detail as an indication of probable administrative costs:

D. C. Vou. No.	Check No.	Date of Check	Amount Paid	Payee	Item
1276	32618	8/ 9/37	\$10. 47	Geo. F. Muth & Co.	Tracing Cloth
3305	45530	8/18/37	1 50	Leet Bros. Co.	B. P. Paper
*3764	50884	8/20/37	3 90	Geo. F. Muth & Co.	B. P. Paper
4695	51819	8/26/37	3 30	Leet Bros. Co.	"
6096	69399	9/11/37	201. 50	Dr. Raymond Selders	Hosp. Equipment
128519	567339	9/16/37	2. 90	Leet Bros. Co.	B. P. Paper
128520	567340	"	1. 45	"	"
12632	106792	10/ 4/37	5. 80	"	"
*129117	567998	10/ 2/37	10 24	Hosp. Equip. Corp.	Hosp. Equip.
*129193	568115	10/ 6/37	5. 00	Fisher Scient. Co.	Supports
*129194	568116	10/ 6/37	12 73	Stout Senet. Sup. Corp.	Med. Supplies
*129523	568476	10/15/37	1 74	Leet Bros. Co.	B. P. Paper
*129706	568722	10/20/37	1 78	P. Myer, Inc.	Med. Supplies
*129888	568867	10/22/37	50 02	Eastman Kodak Co.	Supplies
129889	568862	"	35 10	Lalanc & Grosjean Mfg. Co.	Hosp. Equip.
*129890	568869	"	79 87	"	"
129691	568870	"	11 17	Becton Dickman & Co.	"
*129892	568887	"	4 41	Scientific Hosp. Supply Co.	Med. Supp.
129956	568940	"	3 70	Z. D. Gillman Corp.	Med. Supp.
128957	568941	"	9. 00	Geo. Wakeman Mfg. Co.	Hosp. Equip.
[fol. 734]					
*129970	568951	10/22/37	7 53	V. L. Vuckman Co.	Med. Supp.
*129995	569001	10/26/37	9. 53	Jos. Dixon Crucible Co.	Hosp. Supp.
130928	569032	"	71 04	Lycorning Furniture, Inc.	Furniture
130096	569102	"	188. 75	Sanborn Co.	Hosp. Equip.
*130078	569071	10/27/37	11 47	Bard Parker Co., Inc.	"
*130077	569072	10/27/37	75 50	The Toreson Balance Co.	Hosp. Equip.
130078	569073	"	83. 60	The Pandora Prod. Co.	Hosp. Equip.
*130079	569074	"	5 29	Wilson Rubber Co.	Rubber Gloves
130080	569075	"	40. 00	The Toreson Balance Co.	Hosp. Equip.
*130081	569076	"	56. 54	Gen. Fireproofing Co.	File Cases
*130095	569101	"	5 76	Philbern Thermometer Co.	Hosp. Equip.
*130097	569103	"	4 17	The Gibson Co.	Med. Supplies
*130098	569104	10/27/37	7 17	John M. Moris Co.	Med. Supplies
*130099	569105	"	11 24	Williams, Brown & Earl, Inc.	Hosp. Supplies
*130100	569106	"	77	Henry Allen	"
*130505	569512	11/ 8/37	9 53	M. S. Ginn & Co.	"
*130506	569513	"	3. 96	Weksler Thermometer Corp.	Equip.

D. C. Vou. No.	Check No.	Date of Check	Amount Paid	Payee	Item
*130776	569881	11/22/37	7 76	J. Bishop & Co.	Med. Supplies
130777	569882	"	48 80	Kayden-Paper-Klien	Hosp.
130778	569883	"	99 40	Gen. Elec. Supply Co.	Refrigerator
130779	569884	"	36	"	Globe
*130780	569885	"	52 50	American Instrument Co.	Hosp. Equip.
*130781	569886	"	20 15	W. M. Ballard Co.	Chairs
130782	569887	"	630 70	Gen. Electric Ex-Ray Co.	Hosp. Equip.
*130783	569888	"	6 93	E. H. Shargent & Co.	Med. Supplies
130784	569889	11/22/37	2 00	Art Metal Furnishing Co.	Clock Repairs
130785	569890	"	8 85	E. H. Shargent & Co.	Hosp. Supplies
*130786	569891	"	20 70	Davis & Gich, Inc.	"
*130787	569892	"	2 90	Marrita Char. Co.	" Equip.
*130788	569893	"	1 58	A. Doigger Co.	"
130789	569894	"	26 05	A. S. Ace Co.	"
130849	569932	11/25/37	33 25	Cohen's	"
*130957	570059	11/29/37	12 90	E. H. Shargent Co.	"
130956	570058	"	478 90	Wilmot Castle Co.	"
130958	570060	"	400 16	A. H. Thomas Co.	"
*130995	570101	11/30/37	7 62	Hygrade Sylvania Corp.	Elec. Bulbs
*130996	570102	"	4 26	Gen. Hosp. Equip. Co.	Med. Supplies
*130997	*570103	"	80 49	The Harter Corp.	Hosp. Equip.
*130998	570104	"	22 43	Swendell Co.	" Supp.
*130999	570105	"	44 74	The Globe Wernicke Co.	Office Furniture
*130000	570106	"	6 22	Hugh Riley Co.	Hosp. Supp.
131001	570107	"	9 45	John S. Morritz Co.	"
131002	570108	"	685 80	Hancia Chemical & Mfg. Co.	Ultra Violet-Lamp
131003	570109	"	4 50	Kloman Instrument Co.	Hosp. Supp.
*131004	570110	"	52 30	Gen. Fireproofing Co.	File Cabinets
[fol. 735]					
131005	570111	11/30/37	3075 00	Picher X-Ray Corp.	X-Ray Mach.
131008	571144	11/30/37	639 09	Kloman Instrument Co.	Hosp. Equip.
131009	571115	"	4 65	Barber & Ross Co.	Hardware
*131010	571116	"	22 67	Charles G. Stott & Co.	Desk Pens
131011	571117	"	22 88	J. Frank Kelley, Inc.	Lumber
Total			\$7584.12		
Less:					
Adjustment Voucher			226.47	Charged to Administrative Expense	
Total Accts. Receivable			\$7357.65	Account, H.O.L.C.	

* Purchases made through the Procurement Division, Treasury Dept.

"Although the agreement of March 22, 1937, provided for an advancement from public funds of \$40,000 payable over a period of two years, at a rate of \$20,000 per year, to aid in the organization and establishment of the Group Health Association, Inc., the records show that a total of \$37,357.65 has been advanced and expended by the corporation as of December 4, 1937. Actual operations of the Group Health Association, Inc., did not begin, however, until November 1, 1937. In this connection it was learned that the emergency rooms of the corporation are still being maintained (an activity similar to those maintained in most departments and establishments, which are of doubtful legality) and that physical supervision of the rooms was

taken over by the Group Health Association, Inc., on December 1, 1937, although the four nurses employed are carried on the rolls of the corporation. It is stated by officials of the corporation that the formation of the association and the authorized advancement of public funds to it were to relieve the corporation of the expense of operating and maintaining the emergency room, estimated by the comptroller of the corporation to cost approximately \$20,000. However, the general counsel, subsequently, informally voiced an opinion that such costs would not exceed \$7,000 per year.

"Under date of December 23, 1936, the general counsel of the Home Owners' Loan Corporation rendered an opinion (Exhibit (a)), holding that the funds of the Home Owners' Loan Corporation, the Federal Home Loan Bank Board, and the Federal Savings and Loan Insurance Corporation were available to pay reasonable expenses in connection with the organization and operation of a medical service for the general benefit of employees, and also for expenses in connection with the operation of a credit union operated for the general benefit and relief of employees.

"The opinion is apparently based on the theory that the above-named corporations have implied powers to incur expenses, payable from public funds, for the general benefit and relief of employees, the implication being based on the provisions of section 19 of the Federal Home Loan Bank Act, 47 Stat. 737, which provides:

"The Board shall have power to select, employ and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this Act without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, and agents of the United States. No such officer, employee, attorney, or agent shall be paid compensation at a rate in excess of the rate provided in the case of members of the board. The board shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the government; and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed and paid."

and section 4 (j) of the Home Owners' Loan Act of 1933, 48 Stat. 131, as amended, which provides:

" 'The Corporation shall have power to select, employ, and fix the compensation of such officers, employees, attorneys, or agents as shall be necessary for the performance of its duties under this Act, without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, or agents of the United States. No such officer, employee, attorney, or agent shall be paid compensation at a rate in excess of the rate provided by law in the case of the members of the Board. The Corporation shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government, and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds. The Corporation shall pay such proportion of the salary and expenses of the members of the Board and of its officers and employees as the Board may determine to be equitable, and may use the facilities of Federal Home Loan Banks, upon making reasonable compensation therefor as determined by the Board.'

" 'It thus appears that the Congress limited the expenditures by the corporations to 'necessary expenditures under this Act,' as both provisions, *supra*, contain those words.

" 'Specific legislation has been enacted by the Congress from time to time for the welfare of Federal employees, both civil and military, such as retirement laws, pension laws, and laws for relief of employees injured in line of duty. The enactment of such laws negatives the implication of such powers from general statutory provisions controlling other activities of the Government.

" 'Over 500 of the employees of the corporations here involved have authorized deductions to be made from their salaries for dues, which amounts are to be paid over to the Group Health Association, Inc. In this connection attention is invited to section 3477, Revised Statutes, as amended, section 203, Title 31, of the United States Code, which provides:

“Assignments of claims void. All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same. The provisions of this section shall not apply to payments for rent of post-office quarters made by postmasters to duly authorized agents of the lessors. (R. S. section 3477; May 27, 1908, c. 206; 35 Stat. 411).”

“Furthermore, the act of June 20, 1874, 18 Stat. 109, provides that no such civil officer of the Government shall receive any compensation or prerequisites, directly or indirectly, from the Treasury or property of the United States beyond his salary or compensation allowed by law. Needless to say the instant activity does provide prerequisites not allowed by law, and this at great expense to the United States in carrying out the arrangements stipulated, such as advances, purchases at net costs, and deductions from pay rolls, the expenditures on account of which are made in contravention of section 3678, Revised Statutes, which provides that:

“All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.”

“It has been the long-established rule in the Federal service that the functions of the agencies of the United States are restricted to those activities authorized by gen-

eral or special enactments of the Congress, and where an activity involves the expenditure of moneys of the United States, the appropriation laws must make the moneys available therefor in no uncertain terms, if such activity is to be accepted as lawful. Accordingly, it must be concluded in the instant matter that the disbursements and other costs were made and incurred without authority of law.

"Sincerely yours,

"(Signed) R. N. Elliott, Acting Comptroller General of the United States."

Cross-examination.

By Mr. Kelleher:

Q. Dr. Woodward, in connection with your activities with reference to GHA you were engaged first in making proposals seeking to forestall the growth of GHA?

A. No.

Q. Let me show you Gov. Ex. 202, a photostatic copy, and ask you if that isn't your letter.

A. It seems to be.

Q. And in that letter don't you say that you have no further proposals at present looking toward forestalling the growth of Group Health Association?

A. I do.

I first became interested in Group Health after I received the letter from Dr. Verbrycke dated May 29, 1937 (Gov. Ex. 441-A). I then conferred with Dr. West and came to Washington and after great difficulty I saw Mr. Zimmerman. I told Mr. Zimmerman that if the Government could make loans to HOLC or to GHA, there was no reason why loans couldn't be made to other groups throughout the country. I didn't have an appointment to see Mr. Zimmerman when I saw him the first time; I had never heard of him before. After this talk I went to Atlantic City and left this matter to the Board of Trustees. I reported the substance of my conversation with Mr. Zimmerman to the Board.

I didn't look for Dr. Brown and didn't attempt to locate him at Atlantic City, as I only knew him as Dr. Brown and there are a great many Doctors Brown. I did not have an appointment to see Mr. Zimmerman when I came back to

Washington. I left a message for him telling him that the whole setup was unlawful. I never heard from him again. When I went back to Chicago I think I saw the letter from Dr. Herbst to Dr. West dated June 6, 1937 (Gov. Ex. 106). I contacted Dr. Herbst about the letter and later saw Dr. Verbrycke. I am sure I was in Washington at least once between my return from Atlantic City and July 14, 1937. I wrote Gov. Ex. 177 and it reflects the true facts.

I made the memorandum marked Gov. Ex. 657. Gov. Ex. 657 was received in evidence and read to the jury as follows:

"No official communication was received from any officer of the Medical Society of the District of Columbia concerning the developments there represented by this report. The fact that representatives of the Society had been in conference with representatives of Group Health Association, Inc. and a summary of results came to the notice of the American Medical Association first through its mention incidentally in a letter from Dr. W. P. Herbst to Dr. West, concerning the entire matter. On the basis of that letter Dr. Woodward telephoned to Dr. Verbrycke concerning the situation and as a result received the accompanying report and the promise of a copy of the minutes of the conference."

Q. When you talked with Dr. Verbrycke do you recall that you referred to the statement in the Herbst letter that the District Medical Society intended to go along with GHA if it could do so and save its face?

A. I may have done so. I cannot claim any accurate recollection of the telephone conversation on June 29, or thereabouts, in 1937.

Q. Referring to Exhibit 177, see if this correctly states the facts (reading):

"About 4 o'clock p. m. June 28 I talked to Dr. J. Russell Verbrycke, Jr., Washington, D. C., relative to certain statements in the letter just received by Dr. West from Dr. William P. Herbst relative to Group Health organized under the auspices of HOLC."

A. That memorandum is correct. I will stand by that.

Q. (Continuing reading):

"I referred particularly to Dr. Herbst's statement that the representatives of the Medical Society of the District of Columbia who met with representatives of the Associa-

tion plan to go along with the Association if they could do so and save their faces."

Is that statement correct?

A. If it is in there, it is correct; and I assume you read it from that memorandum.

I received a copy of Dr. Verbrycke's letter of July 12, 1937 to Dr. McGovern (Gov. Ex. 292). I had a telephone conversation with Dr. Verbrycke on June 28.

Q. Did not Dr. Verbrycke at that time state that he would send you by airmail special delivery a copy of the report which his subcommittee had made to the Executive Committee of the Medical Society?

A. I believe he did.

Q. Do you recall that you received that report?

A. No, sir; I do not.

Q. Will you look at Exhibit 36, which is the minutes of the Medical Society, and examine the report which I show you and tell me whether you ever saw that report before?

A. I believe I did.

Q. So that in addition to the letter of July 12, 1937, you also received the report of Dr. Verbrycke to the Executive Committee?

A. I believe I did.

Q. Do you recall that in that report it was stated that GHA "As now constituted" was unethical and that members of the Society cannot become members of the staff of that organization and still remain members of the District of Columbia Medical Society or the AMA?

A. I don't recall a detail of that sort. It may have been in there.

Mr. Leahy: What is the date of those minutes?

Mr. Kelleher: June 21, 1937.

I also received a transcript of the meeting between the representatives of HOLC and the Executive Committee of the District Medical Society on June 24, 1937.

Q. Dr. Woodward; when you undertook, as a result of the meeting of June 29, 1937 of the Board of Trustees of AMA, to investigate GHA, you also had another duty, did you not, as a result of the delegation to the Board of Trustees at the June 29th meeting?

A. You mean the duty of proceeding to Washington?

Q. Yes?

A. Yes.

Q. Why were you authorized to proceed to Washington?

A. To confer with representatives of the Medical Society of the District of Columbia.

Q. Was it to confer or to advise the Medical Society of the District of Columbia?

A. My recollection is, now that you speak of it, that the memorandum ended up with the statement that we were to advise the Medical Society of the District of Columbia if it would take advice.

Q. So that you had two duties: first, to obtain what information you could and, second, to advise the Society if it would take advice?

A. One duty, if you will; it is all one duty.

Q. But you did not mean to leave the impression with the jury during your direct examination that all you were doing was to obtain information?

A. I do not think I left any such impression as that.

Q. You may not have, but I wanted to clear it up if you did.

A. It has been repeatedly shown in the evidence that I advised them to take legal counsel. That was my advice.

Q. You were advising them throughout the period—

A. I advised them to take legal counsel, every chance I got to give any advice.

Q. Before you came to Washington on July 14, 1937, you had received the second Verbrycke report, that is, a letter from Verbrycke to Dr. McGovern dated July 12, 1937, had you not?

A. I am not sure of the date of the meeting as July 12.

Q. July 12 is the date of it.

A. The letter will show. I cannot recall whether I had it in my possession before I left Chicago or not. The time stamp will show.

Q. In any event, you had it a short time after the meeting?

A. Yes, sir.

Q. As result of your receiving that report you knew, did you not, that the Society in the District of Columbia was considering as one alternative policy the disapproval of GHA and "active combat with all measures at our command"?

A. There was some such suggestion in Dr. Verbrycke's letter. I do not recall that the District of Columbia Medical Society had ever adopted his letter as a guide for its official action.

Q. But at least you knew as of the time you received that letter that the Society was considering that?

A. I knew that Dr. Verbrycke had written a letter to that effect. But that is all I knew.

Q. And he had been on the first subcommittee appointed by the Society to consider GHA?

A. I do not know that he was.

Q. At least he was the one that contacted you and asked you to come in?

A. Yes; and he said he was about to retire, and I think that in his second letter he said he had no official status.

Q. But until he retired he was on a subcommittee, was he not?

A. That I do not know.

Q. When you came here in June you talked with Dr. Verbrycke, did you not?

A. I did.

Q. And did you not learn as of that time that he was on a committee of the Society to study GHA?

A. I knew that he had some official position, some connection with the District of Columbia Medical Society, but that it had any specific relation to GHA I did not know; and my recollection is that of the same date that Dr. Verbrycke wrote me, he wrote to Group Health Association, Inc. saying that the existence of the organization had been called to his attention and begging them to send him a copy of their constitution and by-laws and anything else that might enable the Medical Society to give consideration to that organization.

Q. Did you not also know as a result of the Verbrycke letter that the proposal of Dr. Verbrycke concerning opposition was that failure to place a cooperative on the approved list of the Society would automatically prevent consultations?

A. I think he may have made some such statement, although I do not recall that he did.

Q. Did he not also state that another means of opposition would be by preventing doctors connected with GHA from being placed on the courtesy staffs of local hospitals?

A. That may have been Dr. Verbrycke's opinion and he may have stated it. It was not the official action of the American Medical Association or the District of Columbia Society.

Q. Do you know it was not the official action of the District of Columbia Society? Do you not know that it was reported as the report of the Executive Committee—this letter?

A. ~~It may have been of the Executive Committee of the Society.~~

Q. Then it became the official action of the Executive Committee?

A. Yes; the Executive Committee only.

Q. It is true, is it not, that Dr. Verbrycke stated this possible policy in his letter to Dr. McGovern?

A. I believe he did.

.

The Witness: I believe the statement, however, that I had knowledge of that as the action of the Medical Society of the District of Columbia is not correct, because I had no such knowledge, and I just stated that I understood it was the action of the Executive Committee,

By Mr. Kelleher:

Q. I am satisfied with that, Doctor Woodward. The matter we are now referring to is the following alternatives of policy:

1. Approval of cooperatives as at present outlined.
2. A laissez faire attitude of seeing what will happen.
3. Disapproval and active combat with all measures at our command.
4. Disapproval of all other plans and the offer of prepay medicine through the Medical Society (a) either as a Society subsidiary or (b) through a change in the medical-dental service bureau.

"The first of these proposals is manifestly an impossibility. The second alternative involves inertia more than any other factor. Active opposition is impossible at present. Whether it is advisable is another matter. Unless some substitute plan can be suggested, failure to place a co-

operative on the approved list of the Medical Society would automatically forbid any consultation by members of our Society. Any full-time employee of the Corporation could probably easily fail to be put on the courtesy list of the hospital for one reason or another without the fact of his connection with the cooperative being even mentioned. In fact, any combative method would necessary have to be camouflaged to the Nth degree."

It is your testimony now, is it not, that you read this copy of Dr. Verbrycke's letter to Dr. McGovern?

A. Yes; I read that letter representing Dr. Verbrycke's opinion without employing any adoption by the Medical Society of the District of Columbia or any approval by the American Medical Association or by me. It is a matter of opinion. It is an argumentative suggestion of all the possibilities of what might be done and, by implication what might not be done, and it goes no further.

Q. And you also knew at the same time that this was the report adopted by the Executive Committee of the Society?

Mr. Burke: If you have a record that shows that is not true, why do you ask the question? Look at the record.

Mr. Lewin: It was adopted by the McGovern committee; it was referred to the Executive Committee, and it was laid on the table for further consideration.

Q. Dr. Woodward, as a matter of fact you did learn, did you not, that the Society had issued an approved list of organizations from which Group Health Association was omitted?

A. I learned that they had issued an approved list. Later I heard incidentally that Group Health Association had been omitted. There was nothing on the list that I personally received from the Association that indicated even the existence of Group Health Association.

Q. Dr. Woodward, you testified the other day—I guess it was last Saturday—that you received the approved list at your home, did you not?

A. Yes.

Q. And you testified that you took it to the office, did you not?

A. Yes, sir.

Q. And you also testified that you took it to the office be-

cause you felt that it might be useful if any inquiries came up concerning Group Health Association?

A. Yes.

Q. And, as a matter of fact, Group Health Association's name does not appear on the list, does it?

A. So I understand.

Q. Did you not understand that Exhibit 45, which is the letter from Dr. Conklin addressed "Dear Doctor", with which the White List was enclosed—did you not understand from that letter that the approved list related to Group Health Association?

A. No. I gave no particular thought of that. I was at that time an associate member of the Medical Society of the District of Columbia and was therefore on its mailing list, and, living at a Chicago address, it came to me at Chicago. I paid no particular attention to it either one way or the other.

Q. But when you read the following:

"It may have come to your attention that there is an organization or organizations that are interested in getting medical personnel"——

Did you not understand that that referred to Group Health Association?

A. I inferred that that indicated or had reference to Group Health.

Q. So, then, when you received Gov. Ex. 45 it was your understanding then that the first recommendation or first proposal of Dr. Verbrycke's that Group Health Association be omitted from the approved list of organizations and thereby consultations automatically prevented, had been adopted by the Society.

A. No. I gave no thought to the matter at the time.

Q. As a matter of fact, when this letter and the enclosed list of approved organizations were received you did understand that the letter had reference to Group Health Association?

A. It advised conferring with the proper officers, as I recall it, of the Medical Society of the District of Columbia with respect to any contracts one might want to enter into.

Q. And called attention to the constitution, and that the contracts must be approved by the committee?

A. Yes. There was nothing in there to show that he had identified himself with Group Health Association.

Q. Group Health Association's name was omitted?

A. Group Health Association's name was omitted. It was not named there.

I knew that a meeting of the District Medical Society had been held on June 29, 1937 and Dr. Conklin wrote me that at that meeting Group Health had been discussed and that the discussions had ranged from drastic boycotts to various conciliatory measures. I knew as a result of the discussions a new subcommittee had been appointed to canvass the entire situation.

Q. As of August 14, you knew, did you not, from the Verbrycke letter, that the Society was considering opposition to GHA?

A. Opposition to GHA as then constituted.

Q. That is right. And by that you mean, under the plan then proposed, group practice on a prepayment basis?

A. I mean a corporation practicing medicine and engaged in the business of insurance illegally. That was my understanding.

Q. Group Health Association, Inc., involving group practice on a prepayment basis.

A. Yes.

Q. You also knew that the Society had issued a list of approved organizations?

A. Yes.

Q. From which GHA had been omitted?

A. I do not recall whether at that time I knew GHA had been omitted, because, as I said, that list came to me in Chicago and meant very little to me.

Q. But it meant enough so that you took it to the office in order to be prepared to answer inquiries concerning GHA?

A. For general purposes. I will not say specifically GHA. It might come in for the others. I was studying the entire situation.

Q. But you took it to the office for the purpose of being prepared to answer inquiries concerning GHA?

A. Or any of them.

In September, 1937 I made inquiry as to what the District Medical Society was doing (Gov. Ex. 190). I learned in the reply (Gov. Ex. 84) that the subcommittee had reported to the Executive Committee that in view of the

violation of the Code of Ethics of the AMA no approval could be given to GHA and also that participation in GHA by any member of the District Medical Society would render him or her subject to disciplinary action by the Society. I saw Gov. Ex. 111 a letter from Dr. Conklin to Dr. West which states that the District Medical Society "is in full accord with the content of the report of the Bureau of Legal Medicine and Legislation of October 2, 1937." The letter also states that the Society recommended that a copy of the report be sent to all members as indicative of the future policies of the Society with respect to combating the activities of Group Health and also with respect to the ethical responsibilities of the District Medical Society.

I prepared my report to the Board of Trustees for the purpose of assisting those who were charged with the duty of publishing, to make a correct statement of facts.

Q. Let me show you Gov. Ex. 181, which is a letter from you to Mr. Hayes dated August 21, 1937, and I call your attention to the last two paragraphs.

A. This is in reference to that publication.

Q. So that your memory may be refreshed on the matter, I invite your attention to this letter addressed by you to Mr. John F. Hayes here in Washington:

"Confidentially, I am preparing an article on the situation and would like to have the latest details.

Say nothing to Conklin or anyone else about my plans for publication."

Now, is it true, Doctor, that as of August 21, 1937, you were writing an article and did intend to have it published?

A. I didn't plan to have it published; I planned to furnish something which could be used.

Q. Did you plan to have it published in the American Medical Association Journal?

A. I planned to submit it in such a form that it might be usable if the editor, secretary and general manager deemed it proper. It was a complete article in itself and might have been published or might not, and it would have been true in either way.

Q. And as a matter of fact, when you were writing it you intended that it should be published?

A. I planned that it should be available for any use to which it was desirable to put it.

Q. And you expected it to be published?

A. No, I didn't expect an article of that length to be published.

Q. You expected it to be edited and published?

A. Edited and published, or not published at all.

Q. You did refer to the article in your letter, Exhibit 184, to Mr. Hayes. Let me refer you to the next to the last paragraph.

A. That is to the same effect.

Q. And which reads: "I enclose a draft of an article which I prepared with a view to publication." Now, is it true that you did prepare this article, this report, with a view to its publication, subject to the conditions which I have just stated, subject to its being edited?

A. Subject to editing and revising.

Q. These two letters state the facts in that connection?

A. Yes, subject to the understanding that I have just stated in connection with them.

Q. As a matter of fact, Dr. Woodward, you prepared this article in the form of a report in order to avoid conflict on your part with the principles of professional ethics of the American Bar Association, did you not?

A. Not at all, because I had no positive knowledge that it was going to be published.

Q. You had no positive knowledge?

A. No, if I was preparing it for publication I should have prepared it in different form.

Q. But it is a fact that you prepared it in the form in which you did to avoid conflict with the ABA Canons of Ethics?

A. As a report for the board of trustees, no. That is one reason why I did not know it would be published.

Q. I wonder if you would just look at this Journal article, Exhibit 294, which as I understand it is your draft of the article, and refer please to pages 27 and 28 of the draft. On page 27 of the draft of the article you wrote as follows, did you not:

"So far as can be learned from the certificate filed by Group Health Association and from its by-laws, no member of the association and no dependent of a member is to have any freedom of choice of his physician: Ob-

viously, this must be so, for with a limited, salaried, full-time medical staff, operating over an area of 750 square miles or more, it would be impossible for each staff member to cover the entire area daily, to satisfy the desires of members scattered over the entire area. It is understood that the association will not object to a member or a dependant of a member being treated at his own expense, by a physician not in the service of the association. Inasmuch as the members of the salaried staff of the association are likely to be looked on by the profession generally in the community as on the outer verge of ethical practice, if not altogether beyond the pale, it is not clear how they are to obtain qualified consultants or procure hospital service for their patients."

That is in your draft of the article, is it not?

A. Yes, it is.

Q. And the identical paragraph appeared in the Journal article?

A. It did.

Q. Now, will you turn to page 46-B of the Journal article, and let me read to you first your draft of the article and then compare it with the language in the article which was published.

"Especially would quality be likely to fail in times of epidemic and of any unusual prevalence of disease, when the limited medical staff of the association would be overworked and could find no relief. In any event, medical service under the association would be likely to be handicapped by difficulty likely to be experienced in obtaining the best consultant service and hospital accommodations. Physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional caste and therefore may be looked on askance when they seek consultation or the right to treat patients in reputable hospitals."

Now, is the language which I have read from your draft identical with the language in the Journal article?

A. It is not.

Q. What is the difference between what I have read and what is written in the Journal article?

A. In the article as published it appears, "physicians who sell their services to an organization-like Group Health

for resale to patients are certain to lose professional status."

Q. So that the Journal article changes the word from "caste" to "status"?

A. More than that.

Q. And omits the latter part of the sentence, "and therefore may be looked on askance when they seek consultance or the right to treat patients in reputable hospitals?"

A. That is admitted. I frankly say I omitted that, myself either in the first proof or galley proof, so that it never came to the attention of the public generally. It was concealed in the files of the American Medical Association.

Q. But it was in the report you made to the board of trustees?

A. Yes, it was in that report.

Q. Now will you turn to the last page? Will you read that paragraph relating to population, and the percentage of Government employees compared with the total population in Washington?

"Out of a total population of 486,869 in the District of Columbia, 115,912 are civil employees of the United States Government, and of these, 2,517 are employees of the Federal Home Loan Bank Board and its affiliated agencies. If to these persons all of whom are eligible in Group Health Association, we add their dependants, allowing an average of two dependents for each employee, we have a total of 347,736 persons, out of a total population of 486,869 that the promoters of Group Health Association, according to their certificate of incorporation, seek to withdraw from the ordinary practice of medicine and to go over into a Group Health insurance contract-practice system and treat through physicians hired for that purpose. The effect of the withdrawal from private practice of even one-half that number of persons, all of them able to pay for medical services, will materially disturb medical practice in the District of Columbia and react against public interest."

Now with reference to the last two sentences which I have just read, didn't your original report read as follows:

"The effect of the withdrawal from private practice of even one-half that number of persons, all of whom are able to pay for medical services, would materially diminish

the income of physicians in private practice in the District of Columbia and render it necessary for them to increase their charges or to sacrifice the practices they have built up and go elsewhere. Either event might easily react against public interest."

A. Yes, I wrote that. That was in the report to the board of trustees, but was not published to the medical profession throughout the country, even in the District of Columbia.

Q. But it was in the original draft which you presented to the Board of Trustees?

A. Yes.

I received Gov. Ex. 203 from Mr. Hayes telling me the staff of Group Health. I presumably put it before Dr. West. Dr. West on the same day wrote to Dr. Conklin (Gov. Ex. 114) telling him that two members of the Group Health staff, Drs. Lee and Scandifio, were members of the AMA. I have never seen Gov. Ex. 62 before.

Q. Didn't you learn shortly after October 29, 1937, that the doctors associated with Group Health Association would become outcasts in the District of Columbia?

A. I don't know of anyone using the term "outcasts." When it comes to a matter of their losing their status in the professional community, that would follow as a matter of course from the violation by them of the principles of ethics which have been in force for a century.

Q. When you say lose their "status in the professional community," you mean in the District Medical Society?

A. Status in the Medical Society.

Q. By that you mean they would lose their membership in the District Medical Society?

A. Unless they could justify their course of conduct.

Q. And if that Society and the American Medical Association determined that Group Health Association was unethical, then they couldn't justify their conduct before it, could they?

A. I can conceive of no way in which the Medical Society of the District of Columbia or the American Medical Association could pass on the status of Group Health Association; it would have to pass on the ethical conduct of the individual member.

Q. Well, the ethics of the members of the staff of GHA?

A. Yes, and only to this extent; that persons on whose ethics they were passing were members of the association who had voluntarily submitted themselves to the American Medical Association and District of Columbia Medical Society by accepting membership therein. They could not pass on, inquire into the ethics of, a doctor who had not voluntarily assumed the obligation to comply with those ethics.

Q. But if a member of the Medical Staff of GHA were a member of the Medical Society of the District of Columbia, then the District Medical Society and the American Medical Association might pass upon his status?

A. It would be a very difficult and hard thing for the American Medical Association to undertake anything of the kind.

Q. Well, let us say the District Medical Society.

A. The District Medical Society might.

Q. And I think your testimony was that that would automatically follow if the District Medical Society believed that association with the staff of Group Health was unethical?

A. Someone would have to take the initiative. That having been done, the case would take the normal course and the procedure usual in the cases of unethical conduct would follow.

Q. You had already taken the initiative and notified Dr. Conklin through Dr. West who were members of the District Medical Society and who were also members of the American Medical Association?

A. I had not notified him of anything of the sort.

Q. But Dr. West had notified the Society?

A. He may have.

Q. And Dr. West obtained his information from you?

A. As to who were on the staff; I didn't inform him who were members of the District Medical Society and who were not.

Q. All he had to do was to check the District Medical Society directory there, wasn't that all?

A. Yes, his own records.

Q. Dr. Woodward, didn't you understand that the members of the staff of GHA were going to be medical outcasts in the District of Columbia?

A. Not medical outcasts, no.

Q. Weren't you told that?

A. Not that I know of. I don't remember anybody having referred to them as medical outcasts. The reference may have been made, but that is not the usual term.

Q. I show you Exhibit 193 for identification and ask you if this is a letter which you received.

A. Yes, I received that.

Q. And Exhibit 194, which is in evidence, is your reply to that letter, is it not?

A. Yes.

Q. Dr. Woodward, you learned, did you not, within eight days after Dr. West had notified Dr. Conklin of who the members of the GHA medical staff were that the Society had instituted disciplinary proceedings against the members of GHA, who were also members of the DMS?

A. I learned that such action had been taken, whether within eight days or some longer period I can't remember.

Q. You know that you did learn that such proceedings were instituted against Drs. Lee and Scandiffio?

A. Yes.

Q. Didn't you learn that at the conference on November 6, 1937, attended by yourself, Dr. West, Dr. Leland, and Dr. McGovern, and Dr. Hooe?

A. It is quite possible.

Q. Let me refresh your recollection. Take the last paragraph on the first page and the first paragraph on the second page. I will ask you whether this correctly represents what Dr. Hooe has told you, Dr. West, and Dr. Leland?

"The operations of Group Health Association, Inc., began on Monday last. Two members who contracted with GHA were members of the Medical Society of the District of Columbia and the third had sent in his application, which had been withdrawn within the past ten days. There is nothing to be done about this third member at the present time. The resignations of the other two were received by the secretary of the District Medical Society within the week. A letter was sent to each of them asking him to appear before the Compensation, Contract, and Industrial Medicine Committee. They did not appear, but the committee received a communication from one of them. The com-

mittee unanimously recommended to the Society that disciplinary measures be taken," et cetera.

Now do you recall that?

A. I do not recall that as having occurred at that conference, but if it is stated there as having occurred, I know it did, and I would be inclined to say it did.

Q. Now, let me refresh your recollection on this point:

"Dr. Woodward raised the question as to whether notice to these members had been given and stressed the necessity for following strictly the procedure under the constitution of the Medical Society of the District of Columbia."

Do you think you said that?

A. I am quite sure that I said that, if it is there. If it was a question of disciplinary action I am certain that I advised, strict, full compliance with all the requirements of the constitution of the Society.

Q. You advised that any disciplinary proceedings taken should be handled in a proper way?

A. Yes.

Q. And did you at that conference advise further discussion and that nothing further be done until the matter had been gone into in detail?

A. Yes.

Q. And was it gone into in detail?

A. Do you mean did I instruct them as to that detail?

Q. Yes.

A. I don't recall discussing it with them further.

Q. But you do recall that you advised that these disciplinary proceedings be carried on only in strict compliance with the requirements of the Medical Society constitution?

A. Yes, and according to the proper requirements of law also. I have advised too many boards and committees not to have told them that.

Q. And you knew those proceedings were to be against Drs. Lee and Scandiffio?

A. If those are the men in those statements annexed, if they were named there, then they are the parties.

Q. Those names were not indicated in this document, but you knew they were Drs. Lee and Scandiffio?

A. Yes.

Q. I think you have already testified that as early as sometime in June, 1937, you knew from Dr. Verbrycke's letter to Dr. McGovern, a copy of which you received, that one of the plans which Dr. Verbrycke had suggested was that these doctors be excluded from the medical staffs of hospitals?

A. There was something to that effect in a letter written by Dr. Verbrycke to someone, Dr. McGovern, I believe.

Q. And copy of which you received?

A. Yes.

Q. And isn't it true that the hospital matter was also referred to at the November 6 meeting?

A. Probably; I think something has been read from the minutes concerning the matter.

Q. I am talking about the conference in Chicago.

A. I don't recall whether at that conference the matter of hospitals did come up.

Q. Let me refer you to page 7 of the memorandum, which is Exhibit 117, reading as follows:

"Dr. Hooe: In the matter of H.O.L.C., what is your future program?

"Dr. West: It is just exactly the same as it has been all the time. We shall continue fighting it in every way we can. We are going to get all the help we can,"

and that they are going to continue the fight until otherwise instructed.

"Dr. Hooe: The Executive Committee recommended that a letter be addressed to the Medical Boards of the various hospital boards in Washington calling attention to the H.O.L.C. and insisting that the hospitals take cognizance of the situation."

Do you recall Dr. Hooe stating that?

A. I don't recall, but if it is there I will say it occurred.

Q. And in reply to the question expressing some doubt as to the cooperation by the hospital did not Dr. Hooe say: "Is it not, in your opinion, most reasonable that the hospitals should acquiesce," et cetera, but expressing some doubt as to whether they would? Whereupon there was some discussion as to whether or not legislation might not be resorted to; and concluding with the information that all the civilian hospitals in Washington except one, probably one had fallen into line, "which was very gratifying."

Now, is it your testimony, concerning the last few remarks, whether those matters were discussed?

A. The last part I don't recall; I do recall in a general way the discussion with reference to hospitals and also with regard to the legislation or the fact that they might arouse an attempt to get some legislation.

Q. Is it also true that you recall that Dr. Hooe stated they had met on Sunday night, that was the night before going to Chicago, and that all the civilian hospitals had fallen in line? Did he say that?

A. I do not know.

Q. Do you think he said that?

A. I have no thought on the subject.

Q. But if it appears here that he did so state, you would believe it?

A. That or something to that effect.

I attended the meeting of the District Medical Society on November 11, 1937. I don't remember anything of the kind that "Dr. Yater was of the opinion that the hospitals should be contacted and assurances should be given that no member would be allowed to practice there if he is a member of the staff of Group Health Association." I don't mean to say by that that it wasn't said. I don't recall the report of Dr. Warfield made at the meeting of April 6, 1938. To ask me to remember that far back is not reasonable. I told Dr. Verbruycke in my opinion Group Health was unlawful and it may be per se unethical.

Q. Dr. Woodward, just one other question: Didn't you on December 15, 1937, write Dr. Neill a letter and ask him who was leading the forces of the Medical Society of the District of Columbia in their fight on federal-subsidized practice of medicine and insurance by lay groups in the District of Columbia and adjacent groups.

A. I did.

Q. Didn't you write to him on December 22, after you had received a reply, describing the activities of the Society, and say:

"I cannot conceive of its being the function of any public relations counsel to do so unless he is a member of the organization and high up in its ranks"?

A. I did.

Q. And didn't you write, "Of course, your counsel must lead the fight in so far as is involved its legal factors, your

public relations counsel may lead the fight in so far as refers to publicity and relative matters. But whole leadership must devolve on officers and agents of the Medical Society of the District of Columbia, who in the end must be responsible to the Society even for the activities of counsel and public relations counsel."

A. I did. That is in my letter.

Q. There is no question about that?

A. No.

Redirect examination:

I received no advice from Dr. West or any member of the board of trustees of the AMA as to what advice to give the District Medical Society. The only advice I remember giving was that they consult legal counsel and see whether the District Attorney, the Corporation Counsel, the Board of Licensure or the Insurance Commissioner would act. The AMA wasn't involved in any disciplinary proceedings of the District Medical Society. I had no jurisdiction in the matter and the jurisdiction of the AMA was vested in its Judicial Council and the House of Delegates and was confined to appeals on matters of law. I never counseled the District Society with reference to the Washington hospitals. The only jurisdiction the AMA had over the Washington hospitals was that voluntarily vested in it by the hospitals seeking approval for internships and residencies. I have no information of anything that Dr. West might have done other than authorizing the editing of the article I wrote.

Recross-examination:

Dr. West reported to the Board of Trustees of the AMA that the AMA had done everything it could to combat the movement on the basis of the evidence that it was contrary to the policy of the House of Delegates.

I may have told the District Medical Society on April 6 that if there was anything the AMA could do to help the local Society I hoped it would feel free to call on the AMA for such help as we know it is a national fight but we are with you.

Redirect examination:

We brought the matter to the attention as widely as we could of the members of the American Medical Association.

scattered throughout the United States, because the opposition, if there was opposition to the national development of Group Health, Inc., must come from the local organization; the proposal would be a proposal about a Group Health, Inc., to set up an agency in some state under this charter. We wouldn't go into a state and oppose it there; the local people would have to do that.

Q. Did you, as a matter of fact, do anything further than the publication of the article?

A. No, other than writing to some members of the Senate and other officials for information.

The defendants then stated to the Court that the illegality of Group Health and of the Home Owners Loan Corporation payment of \$40,000 to Group Health, the contract between Group Health and the Home Owners Loan Corporation under which Group Health sold \$40,000 worth of medical services to the Home Owners Loan Corporation, the actual payment of this \$40,000, by the Home Owners Loan Corporation; the economic unsoundness of Group Health, the illegality of the operations of Group Health, the ruling of various public law enforcing officials and several Congressional committees that Group Health was operating illegally, the opinion of Justice Bailey in a declaratory judgment suit, the necessity for revamping the by-laws of Group Health to overcome apparent illegality, the order of the United States Attorney and the Corporation Counsel to Group Health to cease its operations because contrary to law, and the unprofessional advertising, soliciting and coercion of Group Health and the subsidized, unethical and illegal character of the practice of Group Health were factual issues in the case, were widely discussed in the evidence of the Government, were known to the defendants, were believed by the defendants, and were matters and circumstances tending to aid the Court and jury in determining the truth and the consequences and reasonableness of the acts charged to the defendants, and the intent of the defendants in doing those acts, and that all the defendants did was to engage in lawful argument and persuasion. Defendants offered to prove said facts, and then made the following formal offer of proof:

Defendants' Offer of Proof

"On the question of the illegality of Group Health Association, Inc., and the receipt by it from Home Owners Loan

Corporation of \$40,000 illegally, the defendants offer to prove as facts and circumstances known to these defendants during the times herein involved:

1—The charter of Group Health Association, Inc., and the amendments thereto which are contained in a stipulation herein.

2—The By-laws of Group Health Association, Inc., and amendments thereto which were in effect during the period of the indictment and which are contained in a stipulation herein.

3—The facts known to these defendants pertaining to the actual operations of Group Health Association, Inc., which the defendants say tend to show that Group Health Association, Inc., was a corporation practicing medicine contrary to law and engaged in the business of insurance contrary to law. The said facts will show among other things the following:

(a) That Group Health Association, Inc., entered into contract with Home Owners Loan Corporation wherein it offered as a corporation to render and deliver to Home Owners Loan Corporation certain medical services therein described for a consideration of \$40,000.00.

(b) That Group Health Association, Inc., as a corporation contracted with its members to furnish them medical service; and that Group Health Association, Inc., did furnish medical service to its members.

(c) That Group Health Association, Inc., as a corporation employed doctors to work in a clinic, rented and operated by Group Health Association, Inc., there to treat and render medical service to the members of Group Health Association, Inc., pursuant to the contract between Group Health Association, Inc., and its members.

(d) That the trustees of Group Health Association, Inc., together with the lay administrator and other lay employees of Group Health Association, Inc., dominated and directed the rendering of medical service by Group Health Association to its members.

(e) That no doctor could be employed or discharged by Group Health Association, Inc., without the consent and approval of the board of trustees, all of whom were laymen.

(f) That Group Health Association, Inc., as a corporation, was practicing medicine and was not a broker which brought together the members of Group Health Association and the doctors who rendered medical service to them.

4—That Group Health Association, Inc., was subsidized by Home Owners Loan Corporation and received from Home Owners Loan Corporation money and other things of value belonging to the United States, contrary to law.

5—That Group Health Association, Inc., entered into a contract with Home Owners Loan Corporation wherein it promised to perform certain medical service for Home Owners Loan Corporation and, in return, received money and things of value belonging to the United States, contrary to law.

6—The members of Group Health Association, Inc., assigned to Group Health Association portions of their salaries, due or to become due, from Home Owners Loan Corporation, contrary to law, and that deductions were made from the said salaries by Home Owners Loan Corporation and paid to Group Health Association, Inc., contrary to law.

7—Resolutions were passed by Home Owners Loan Corporation authorizing contract and amended contract with Group Health Association, Inc., for the furnishing of medical service by Group Health Association to Home Owners Loan Corporation, all without authority of law. That resolutions were passed by Home Owners Loan Corporation approving By-Laws of Group Health Association, Inc., which in substance and in effect provide that said Group Health Association, Inc., should at all times have on its board of trustees at least two members thereof who were designated and appointed by Home Owners Loan Corporation, all without authority of law.

8—That Home Owners Loan Corporation received legal opinion from its attorneys in substance holding and conceding that Group Health Association, Inc., was engaged in the insurance business, contrary to law, and engaged in the practice of medicine, contrary to law, unless and until its By-laws were changed, and as a result thereof said By-laws were so changed, and that these alleged conditions, or part thereof, existed until at least May 2, 1938.

9—That the Acting Comptroller General of the United States held and found that the payments by Home Owners Loan Corporation to Group Health Association were made and incurred without authority of law to the knowledge of the defendants. That said Acting Comptroller General also held and found that the aforesaid contract between Group Health Association, Inc., and Home Owners Loan Corporation was a contract for the sale of medical service, contrary to law to the knowledge of the defendants.

10—That a duly authorized proper committee of the House of Representatives of the United States held and found that payments by Home Owners Loan Corporation to Group Health Association, Inc., were an illegal diversion of the money of the United States, to the knowledge of the defendants.

11—That the United States District Attorney of the District of Columbia and the Corporation Counsel of the District of Columbia held and found that the operations of Group Health Association, Inc., were contrary to law up to the time of the entry of the decree in Group Health Association, Inc., vs. Moor, et al., to the knowledge of the defendants.

12—That several attorneys consulted by defendants advised that the operation of Group Health Association, Inc., was contrary to law, and defendants so believed.

13—That several attorneys consulted by defendants advised that Chapter 9, Article IV, section 3, of the constitution of the Medical Society of the District of Columbia was a legal provision, and defendants so believed.

14—That several attorneys consulted by defendants advised that the Principles of Ethics of the American Medical Association and all thereof were legal, and defendants so believed.

15—That several attorneys consulted by defendants advised that they had a legal right to enforce Chapter 9, Article IV, section 5, of the constitution of the Medical Society of the District of Columbia, and defendants so believed.

16—That all of defendants' acts and doings were for the purpose of advancing their own interest and to protect

their own society association rules of ethics and method of distributing medical service and to repel an assault on the same by Group Health Association, Inc., as distinguished from the purposes of restraint as alleged in the indictment.

17—That the defendants believed that the \$40,000.00 and other things of value paid by Home Owners Loan Corporation to Group Health Association, Inc., was an illegal diversion of the money of the United States.

18—That belief on the part of the defendants that Group Health Association, Inc., was illegally engaged in the practice of medicine, had received public funds unlawfully, and illegally engaged in operating an insurance company, was in part the basis for the following acts of defendants:

(a) Enforcement of Chapter 9, Article IV, section 5, of the constitution of the Medical Society of the District of Columbia, by disciplinary proceedings.

(b) The issuance of the so-called 'white list.'

(c) Refusal, if any, to consult with the doctors employed by Group Health Association, Inc.

(d) In enacting and distributing a resolution of the Medical Society of the District of Columbia dated December 1, 1937.

(e) The correspondence conducted between the defendants and between defendants and third persons relating to Group Health Association, Inc.

(f) Discussions, remarks, motions, and other pertinent acts of defendants, relative to Group Health Association, Inc., its doctors, memberships and operations.

19—That because of the belief of the defendants in the illegality of the operation of Group Health Association, Inc., and the illegality of the payment of certain moneys by Home Owners Loan Corporation to Group Health Association, Inc., the acts and doings of defendants in the premises were reasonable argument and persuasion, or reasonable regulation of professional practice.

20—That the illegality or belief in the illegality of Group Health Association, Inc., brought into operation Chapter 9, Article IV, section 5, of the constitution of the Medical Society of the District of Columbia. The said section 5 is valid and it was and is lawful for the Medical Society

**CORRECTION AND AMPLIFICATION OF RECORD ON
APPEAL**

**In the United States Court of Appeals for the
District of Columbia**

APRIL TERM, 1941—SPECIAL CALENDAR

No. 7929

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

No. 7930

**THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA,
A CORPORATION, APPELLANT**

vs.

UNITED STATES OF AMERICA, APPELLEE

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA**

**In the United States Court of Appeals for the
District of Columbia**

APRIL TERM, 1941

No. 7929

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, APPELLANT

vs.

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**THE MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA,
A CORPORATION, APPELLANT**

vs.

UNITED STATES OF AMERICA, APPELLEE

**ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA**

(1)

DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF COLUMBIA

Criminal No. 63221

UNITED STATES OF AMERICA, PLAINTIFF

vs.

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, MEDICAL
SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION,
DEFENDANTS

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, do hereby certify the annexed to be true and correct copies of the original order signed in the above-entitled cause on the 5th day of February 1942, and pages 3651 to 3667, inclusive, of Volume 27 of the transcript of proceedings filed in the said cause on the same day, said writings to constitute a supplemental record on appeal.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 6th day of February 1942:

[SEAL]

CHARLES E. STEWART, *Clerk.*

By: H. M. HULL,

Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Criminal No. 63221

UNITED STATES OF AMERICA, PLAINTIFF

vs.

AMERICAN MEDICAL ASSOCIATION, A CORPORATION, MEDICAL
SOCIETY OF THE DISTRICT OF COLUMBIA, A CORPORATION,
DEFENDANTS

Order

Upon the foregoing petition it is this 5th day of February, 1942, by the District Court of the United States for the District of Columbia,

ORDERED that the said omission in the Record on Appeal in this case shall be corrected to include therein, following the first paragraph upon page 945 thereof, that portion of the reporters transcript of proceedings at the trial of this case contained in pages 3651 to 3667, inclusive, thereof, and that the Clerk be, and he is hereby, authorized and directed to certify and transmit to the United States Court of Appeals for the District of Columbia a supplemental record containing said portions of the said transcript.

JAMES M. PROCTOR
District Judge

Appellants by their attorneys object to the foregoing order and except thereto,

JAMES M. PROCTOR
District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA

Criminal No. 63221

UNITED STATES OF AMERICA

v.

AMERICAN MEDICAL ASSOCIATION ET AL.

WASHINGTON, D. C., *Friday, March 14, 1941.*

The trial of the above-entitled cause was resumed before Associate Justice James M. Proctor, in Criminal Division No. 2, at 10 o'clock a. m., pursuant to adjournment on Thursday, March 13, 1941.

APPEARANCES:

On behalf of the United States:

John H. Lewin, Special Assistant to the Attorney General.

Grant W. Kelleher, Special Assistant to the Attorney General.

George B. Haddock, Special Attorney, Department of Justice.

Edward J. Hickey, Jr., Special Attorney, Department of Justice.

Walton Allen, Special Attorney, Department of Justice.

Compton Timberlake, Special Attorney, Department of Justice.

Marvin J. Coles, Special Attorney, Department of Justice.

On behalf of defendants Medical Society of the District of Columbia, Washington Academy of Surgery, Arthur Carlisle Christie, Coursen Baxter-Conklin, James Bayard Gregg Custis, William Dick Cutter, Robert Arthur Hooe, Thomas Ernest Mattingly, Leon Alphonse Martel, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Wallace Mason Yater and Joseph Rogers Young:

Charles S. Baker,
William E. Leahy,
Warren Magee.

On behalf of defendants American Medical Association, Harris County Medical Society, Morris Fishbein, Rosco Genung Leland, Olin West, and William Creighton Woodward:

Edward M. Burke,
Seth W. Richardson,
Adrien Busick.

On behalf of defendant Prentiss Willson:

John E. Laskey.

PROCEEDINGS

(Counsel for both sides approached the bench and conferred with the court, which conference was not reported. At the conclusion of the conference, counsel resumed their places at the trial table and the trial proceeded as follows:)

The COURT. Gentlemen, I have received your papers, for which I thank you. I see they involve a great deal of work, and I think they will be very helpful. I have only had an opportunity to read them over briefly, and there are certain things that I want to be sure of. Take, for instance, your offer of proof. You speak first of the charter of the Group Health Association, Inc. I was under the impression that that was in.

Mr. LEAHY. I think it is in, if your Honor please.

The COURT. We do not want to be uncertain about it.

Mr. KELLEHER. No; it is in. It is stipulated.

Mr. LEAHY. Yes. I think the stipulation is in, too.

Mr. KELLEHER. The by-laws are also in, your Honor.

The COURT. Of course as to "The facts known to these defendants," involves their own testimony, I assume, to a large extent.

Mr. LEWIN. That is more specifically described in (a) and (e).

The COURT. Yes; I see it goes into details. That is predicated, of course, upon documentary things as well as other matters.

Another thing I wish to ask: Is the contract between the Home Owners Loan Corporation and Group Health Association, Inc. in evidence?

Mr. LEAHY. Not yet, your Honor.

Mr. KELLEHER. It is not, your Honor.

The COURT. I see no reason why that may not go in; I mean, for my purposes. Of course, depending upon my ruling, it will either have to be treated as of no effect or treated as of effect, whatever my ruling may be.

Mr. LEWIN. How about having it annexed to the proffer?

The COURT. I would like to have it in evidence. I cannot control its use, but according to the opinion, as I read it, I can

control its use just as I can that of the contract. So I want that in.

Mr. LEWIN. Which item is that, your Honor?

The COURT. It is referred to in (a) of paragraph 3. You have it available, I assume?

Mr. KELLEHER. They have subpoenaed it, I believe, your Honor.

The COURT. It should be in.

Mr. BURKE. There is an amendment to that contract.

The COURT. I want the whole thing in, any features of written contracts or contractual relations between those two organizations.

Mr. LEWIN. It goes in without any of this characterization, though?

The COURT. Yes; just the papers themselves.

Mr. KELLEHER. (a) is under the heading of the facts known to the defendant. That is in.

The COURT. That would depend upon their own testimony. Then, of course, I want anything that shows the contract of membership, the membership rights of the doctors of Group Health.

Mr. KELLEHER. I think that is in the by-laws.

Mr. LEWIN. That is the application for membership.

The COURT. I assume it is covered by the by-laws.

Mr. LEWIN. Yes; I think it is.

Mr. LEAHY. Yes, your Honor; and there are some other matters explaining the by-laws, explaining the reason for their amendment also.

Mr. LEWIN. I do not believe we want to go into that.

The COURT. I have not reached that. Let us take it up in order, because it is confusing otherwise.

Mr. KELLEHER. Your Honor understands that there is no formal contract with the members?

The COURT. It is a contract that you reached through the by-laws of the organization?

Mr. KELLEHER. Yes.

The COURT. And of course the charter may form a part of it. Are not some of the contracts with the doctors in?

Mr. LEAHY. I think they are, your Honor.

The COURT. I know Scandiffio's and Lee's are in. I suppose they are typical, are they not?

Mr. LEWIN. I do not believe there were ever any written contracts except those.

The COURT. If there are any, they certainly ought to be in.

Mr. KELLEHER. They are, your Honor.

Mr. LEAHY. Scandiffio's and Lee's contracts?

Mr. KELLEHER. Yes.

Mr. LEAHY. Submitted and unsigned.

The COURT. There was also a copy of it sent to the American Medical Association.

Mr. LEWIN. Yes; and I believe it was also involved in the proceedings before Judge Bailey.

The COURT. It is in, I am sure. Please keep your notes of these corrections.

This (d) would be covered by the papers which we have made reference to.

Mr. LEAHY. Supplemented by testimony in explanation of the by-laws which are already in.

The COURT. I do not assume you mean that you should show, for instance, that Mr. Penniman is the president of the Association, and when John Jones is being treated by Dr. Scandiffio he assumed in any wise to instruct Scandiffio as to the medical service or attention that he should render to Mr. John Jones.

Mr. LEAHY. Not quite so direct as that, your Honor.

The COURT. It is just generally?

Mr. LEAHY. Yes, sir.

The COURT. The power of administration.

Mr. LEAHY. Yes.

Mr. LEWIN. Tied up with the power to make the contract or to terminate it.

Mr. RICHARDSON. It is further than that, because there will be specific testimony as to interference.

Mr. LEWIN. Don't you think, then, that the proffer ought to be a little more specific?

The COURT. Yes. It is now a little vague. I would assume in reading it hurriedly, and as I read it now, that you merely have reference to administrative supervision.

Mr. LEAHY. There will not be any testimony showing that anyone stood over a doctor and said, "You do this or that."

The COURT. There is nothing to suggest that in any given case of rendition of medical care by a doctor, that a member, or any lay officer of the Association attempted in any wise to direct the medical officer or doctor as to how he should render medical treatment?

Mr. LEAHY. No, sir. We have no such testimony as that.

Mr. LEWIN. I think it is all right except for any implications to be drawn from the word "discharged." There may be some attempt to torture that.

The COURT. That will be revealed in the by-laws and by the contract.

Mr. LEWIN. Yes—the power to contract or to terminate the contract.

The COURT. I say, that will be controlled by the papers that are in. That is pretty much a conclusion.

Mr. LEAHY. Yes, pretty much.

Mr. LEWIN. I have marked it as such.

Mr. RICHARDSON. There are going to be some facts by which we arrive at the conclusion.

Mr. KELLEHER. I am wondering if there is anything additional which they intend to offer other than what we have already proceeded to discuss.

The COURT. I assume not.

Mr. LEWIN. Embraced in (a) to (e).

The COURT. Now, No. 4 relates to the contract between these two organizations.

Mr. LEAHY. That is right, your Honor.

The COURT. And I assume the same as to five?

Mr. LEAHY. Yes, your Honor.

The COURT. And 6?

Mr. LEAHY. Yes, your Honor.

The COURT. Are these regulations, 7 and 8, in?

Mr. LEAHY. No, your Honor.

The COURT. Well, put them in. They have been testified to by Mr. Penniman.

Mr. LEAHY. Yes, your Honor.

The COURT. The substance of them, I know; both Penniman and Kirkpatrick.

Mr. LEAHY. I think there is no point about them except materiality.

The COURT. Well, put them in and we will have the whole facts.

No. 8 I do not think needs to be supported. It is very clear. I mean, it does not need to be supported by any documentary evidence.

Mr. LEAHY. There is some already identified on cross-examination by Mr. Kirkpatrick.

Mr. KELLEHER. I am afraid I do not understand.

Mr. LEAHY. Do you recall the letter that I mentioned but did not introduce into evidence? There are some letters from the counsel of the Association.

Mr. KELLEHER. This is the H. O. L. C., your Honor, and I do not believe it is in evidence. I may be in error about that, but I don't believe it is.

The COURT. The statement is clear enough. I can rule on that without reading the opinion.

Mr. KELLEHER. There is no ruling on that at this time?

The COURT. No. I am just accepting that as an offer. The same with 9; the same with reference to 10, because if I should hold them material, then they will all be admitted. The statement is sufficient. The same with respect to 11; the same with respect to 12, 13, 14 and 15. Sixteen need not be amplified. The offer is clear enough.

Mr. LEWIN. Might I suggest that when it is presented, however, in piecemeal as the evidence comes along, it is a pretty difficult thing to analyze. You get to talking about purposes, intents and motives and that sort of thing.

The COURT. All this goes to the question of belief upon their part as to the justice and legality of their rights, that they believed they were legal, or something like that. It supports an honest belief. The question is whether such an honest belief is admissible.

Mr. RICHARDSON. An honest belief with reference to their acts.

The COURT. It all goes to support an honest belief upon their part which motivated them.

Mr. LEWIN. Your Honor understands it as a proffer of motive?

The COURT. It is a proffer to prove the thing.

Mr. LEWIN. But it is a proffer of motive. Is not that the way your Honor understands it?

The COURT. I am not going to say whether it is motive or intent at the moment. I am not using those words technically.

Mr. LEWIN. But that is the point that worries me a little bit.

The COURT. I will be able to distinguish it later.

Of course (a) of 18 is in. That is part of the Government's case.

Mr. RICHARDSON. Did you pass 17, your Honor?

The COURT. There is nothing there that needs to be amplified. All these matters necessarily depend upon the main question raised by 18, as to belief.

Mr. KELLEHER. That is right.

The COURT. And the things referred to from (a) to (f) are all in evidence through the Government's testimony, I assume.

Mr. LEAHY. Yes, your Honor.

Mr. LEWIN. That is true.

I do not know what "basis" means, exactly. That is in the same offer. No. 18—that this belief was the basis for those things. There, again, we may get into this confusion of intent and motive which may ruin us.

The COURT. I am not going to get confused about it, unless you confuse me. It is not a new question with me at all.

Mr. LEWIN. Oh, I am sure of that. I did not mean to suggest that for a moment.

The COURT. I see it worries you, but I think you may rest upon my distinguishing between them.

Mr. KELLEHER. Nineteen is a conclusion, is it not?

The COURT. Yes. That is upon the same basis as some of the previous ones. The constitutional provision referred to in paragraph 20 I assume is in evidence.

Mr. LEAHY. Yes, your Honor.

Mr. LEWIN. There, again, that is a conclusion of law, if your Honor please.

The COURT. Those are questions of law.

The rest is argumentative, I assume.

Mr. LEWIN. Does your Honor understand, then, that the only one of these upon which additional testimony will be offered will be (d) of paragraph 3?

Mr. KELLEHER. No. They won't offer any on that.

Mr. LEWIN. They said they would.

Mr. KELLEHER. As I understood it, (d) was a conclusion to be drawn from the documentary evidence—

Mr. LEWIN. Mr. Richardson said they would have some testimony, and his Honor asked a little about the character of the testimony.

The COURT. I think it was finally agreed between counsel that that was really based upon inferences to be drawn from the documentary evidence.

Mr. RICHARDSON. What is that, your Honor?

The COURT. Paragraph (d) of 3.

Mr. LEAHY. That may be supplemented or explained by testimony.

Mr. KELLEHER. I was under the impression that Mr. Leahy said it was purely a conclusion. Your Honor asked if there was any such evidence direct to the point of actual instruction as to the method of treatment of a patient, and he said they did not have that.

Mr. RICHARDSON. We do expect to show instructions by the board of trustees to their doctors that limited their activity.

Mr. KELLEHER. That limited the extent?

Mr. RICHARDSON. Yes.

Mr. LEWIN. Then I think the proffer ought to be more specific about that, and it ought to be limited.

Mr. LEAHY. What we hoped to be able to do was to acquaint your Honor with the general character or type of testimony; but of course as a witness is on the stand an answer might elicit another question which, in turn, would bring out some other and different testimony. But it will be within that field or range which is indicated in the proffer.

Mr. LEWIN. I am not suggesting that counsel would be bound if something extraordinary happens in the course of the trial, if some new evidence develops that none of us knows about; but if he knows now the character of that testimony I think it ought to be stated so that it can be dealt with specifically. Mr. Richardson has been kind enough to state one type of evidence. Was that in writing?

Mr. RICHARDSON. No.

Mr. LEWIN. Oral instructions.

Mr. RICHARDSON. Here is a board with dominant figures on it, and their activities depended upon their budget, the amendment of the by-laws and upon the change in their attitude; and what we propose to show is, by general testimony, what happened between the board and the people in charge of the medical service.

THE COURT. Let me ask you this. Do you intend to show that the Group Health Association, contrary to its contracts with its members, infringed upon or impaired those contracts in the service which it rendered?

Mr. RICHARDSON. The only contract, so-called, as I understand it, would be that indicated by the by-laws, plus the application. We have been told that the fact is that there was a violation of those contracts.

THE COURT. I will simply say this to counsel, that if upon reflection you see that your offer involves any such situation as that, please advise me as quickly as you can.

Mr. LEAHY. Yes, your Honor.

THE COURT. If, of course, as I have assumed, it is predicated upon inferences to be drawn from the legal control that was given to the board of trustees and officers over the conduct of the Association, if merely inferences are to be drawn from those things, then there is no need for any supplemental offer; but if it goes beyond that and shows that contrary to and outside of the authority and duties laid down in these instruments, these corporate instruments, the officers in fact did assume to impose their will upon the doctors to the point which amounted to actual interference in a particular case, then I want to know that.

Mr. LEWIN. And I suppose counsel for the Government would get the information at the same time?

The COURT. It goes beyond that, because it is not a question of whether they did it under this offer, but whether that was known to the defendants.

I think that clears the situation up. My idea was to clarify these things that we have and then permit you gentlemen to add anything new in the way of argument that occurs to you, in the hope that I might dispose of this by 1:30 and go on with the evidence. But now the suggestion has been made by counsel for the Government that they would like a little time to consider these things more fully and that I ought to give them until 1:30 to do it. If I do that I will be in no position, of course, to dispose of it, because I do not want to have my mind reaching conclusions until any argument of counsel is completed. In other words, I want the views all before me before I attempt to consider the question. I do not want to lose time. It is getting to be a matter of anxiety to me, the way the case is being continued. Whether we would gain time by that or not I do not know.

Mr. LEWIN. What would your Honor think of this suggestion—adjourning for three quarters of an hour to let us get our thoughts in order?

The COURT. But that does not give me much time to think things over. It takes you gentlemen a little time to think, and it takes me a little time to think, too. The matter has been pretty well argued yesterday and supplemented by briefs, and I understand the points pretty well.

Mr. LEWIN. Let us submit it without argument, then.

Mr. LEAHY. I really do not know just where we are. Did you want time to look over something?

Mr. LEWIN. Yes. If you are going to make an argument on this thing, I would like to prepare myself to make an argument in answer to it.

The COURT. Let me ask defense counsel this, without scaring you. I have no conclusions at all at the present moment about it. If I should rule against you, would you be ready to go on on the basis of such a ruling?

Mr. LEAHY. Would your Honor indicate in respect to what points?

The COURT. With respect to the point of legality and belief, both of those questions.

Mr. LEAHY. Of course I would try to do the best I could. It would be pretty difficult, if your Honor please, and I should like to be heard on that question.

The COURT. Are you in position to argue that?

Mr. LEAHY. Yes; I will argue it now.

The COURT. You are, too, are you not?

Mr. LEWIN. I will be prepared to go on, I think.

Mr. RICHARDSON. We did not finish our arguments yesterday.

The COURT. No; the arguments were cut short yesterday.

Mr. LEAHY. If Mr. Lewin would like some time, subject to your Honor's own discretion in the matter, I do not want to object, because I know these questions come up, on both sides.

The COURT. If we do not go on, and I allow the decision to go over until Monday, you will be ready at that time to proceed?

Mr. LEAHY. Oh, yes.

The COURT. You have got to anticipate the decision either way.

Mr. LEAHY. Yes. I will not delay the court. We will be ready.

Mr. LEWIN. I do not want to be in the position of appearing to want delay, because I am really not in that position; but how would you feel about limiting the arguments so that you have plenty of time for the decision?

The COURT. I might give you a half hour apiece. Too much argument confuses me. I can digest just so much of it.

Mr. LEWIN. Suppose we start in at 1:30 and had an hour's argument and then your Honor took the rest of the day to consider these questions and gave us the decision today?

The COURT. It is not going to inconvenience you, because they are putting in their case now.

Mr. LEWIN. No; I was suggesting it from their point of view.

The COURT. Mr. Leahy says they will be ready.

Mr. LEWIN. I thought he said he had to have more time.

The COURT. They will have time to prepare themselves to meet the decision, whichever way it goes. I think on both sides you are entitled to a little further argument. I cut the defense counsel off, or they were cut off yesterday, by reason of developments. They had some ten or fifteen minutes left. Mr. Leahy was about to speak, I believe.

Mr. LEAHY. Yes, your Honor.

The COURT. And I should like to go on now so that I shall not have to come back here. When I have an important question to decide I like to get the argument over with and have time to think.

Mr. LEAHY. May I have about five minutes to step up to the Bar library?

The COURT. Yes. Don't you think you can meet the situation?

Mr. LEWIN. I will if your Honor wants me to.

The COURT. Your argument may not be quite as perfect in diction, and so forth, but I am sure you have the thought well in hand.

Mr. LEWIN. I feel a little bit unprepared, in view of this new development here.

The COURT. If it will help you any, I will give you until 11 o'clock.

Mr. LEWIN. I think that is fine. Would your Honor suggest the question or point you would care to hear argument on? Or don't you feel you would care to do that? Then we can narrow our endeavors.

The COURT. I do not want any repetition of what occurred yesterday.

Mr. KELLEHER. Would your Honor like to hear argument on legality of the contract and on the binding effect of the decision of Mr. Justice Bailey?

The COURT. You covered those points yesterday.

Mr. KELLEHER. I beg your Honor's pardon; I do not mean to contradict you, but I believe Mr. Lewin argued yesterday mainly that even if it were illegal it was not an issue in this case. We also take the position that the grant was a perfectly legal grant.

The COURT. I will not indicate to you what your argument shall be. I have indicated it to you in going over this paper, mentioning the things that concern me, and you have those general questions. I hesitate to allow my mind to reach any hasty conclusion. I would rather keep my mind open. I think it would be only fair if you want to supplement what you said yesterday, and I will give you an opportunity to do that before they speak. I think that would only be fair. If you find anything new that you want to discuss, then I think it would be better for you to lay that before me first, so that counsel will be in position to answer. I will give you until 11 o'clock. I expect to hold you to another hour. You have had your 30 minutes; you have had 30 minutes as against 20 minutes for the defendants, so far. I will add another hour to the argument. You get 20 minutes and they get 40 minutes.

(Thereupon an informal recess was taken until 11 o'clock a. m., at the conclusion of which the following proceedings took place:)

Mr. KELLEHER. Your Honor, as I understand it, we have 25 minutes and counsel for the other side have 35 minutes?

Mr. LEAHY. No—40 and 20.

The COURT. Don't waste any of it.

of the District of Columbia to refuse to approve a contract between one of its members and a corporation illegally practicing medicine, or which it reasonably thinks is illegally practicing medicine. If this were not true, the Medical Society of the District of Columbia would be required to approve a contract between one of its members and a corporation illegally practicing medicine. The result of such an approval would subject the doctor in question and the Medical Society to a prosecution for violation of a law. The action of the Medical Society of the District of Columbia in refusing to approve such a contract is not evidence of a conspiracy in restraint of Group Health Association, Inc., but directly an effort to prevent its members from contracting with a corporation illegally practicing medicine. If the Medical Society of the District of Columbia cannot so enforce the provisions of its constitution it will be destroyed."

The Government objected to the receipt of any evidence on the issues described on the ground that such matters were incompetent, irrelevant, and immaterial; that the illegality of Group Health, the fact that its practice violated the principles of ethics of the defendants, that it was subsidized by the Government, or that these facts were believed by the defendants and that government officials such as the United States Attorney, the Corporation Counsel, the investigating committees of the House of Representatives and Senate of the United States, the Comptroller General of the United States had so ruled and publicly announced their rulings, and that legal proceedings were instituted for the purpose of having the legality of Group Health and its operations determined, were all incompetent, irrelevant, and immaterial.

The Court ruled that none of the evidence described in the offer of proof of the defendants was admissible upon any of the grounds urged, sustained the objections of the Government, refused to receive any evidence of the character described in the offer and ruled as follows:

"The immediate question involves admissibility of certain evidence set forth in defendants' offer of proof. By understanding between court and counsel the offer covers in detail a broad range of evidence. In connection with evidence already in, it forms the basis for defendants' claim that Group Health Association, Inc., was illegally engaged

in the practice of medicine. It is contended that the Anti-trust Act does not embrace a business illegal in its nature, and that the restraints forbidden relate only to lawful trade and commerce.

Further, it is contended that even if it be held that Group Health Association, Inc., was not an illegal enterprise, nevertheless defendants honestly believed it to be so, and therefore in defense may rightfully justify their acts by proving such beliefs and the facts supporting them, including advice of their counsel, an opinion of the Comptroller of the Treasury and a report of a congressional committee. It is argued that evidence of this kind is material and competent to refute a criminal intent, by showing that defendants' acts were taken only to protect themselves the profession and the public interests against supposed illegal activities of Group Health Association, Inc., and that if restraints did result they were under the circumstances reasonable.

The questions thus presented are important. The future course of the case awaits their determination. For obvious reasons my views must be but briefly stated.

1. As to illegality of Group Health Association, Inc., I do not think it was engaged in medical practice. It should be regarded merely as a convenient medium adopted by a group of persons for concerted action to secure for themselves and their dependents medical care upon a fixed prepayment plan. The association did not render medical service. It simply provided the personnel and facilities pursuant to the corporate plan adopted by the members. Licensed physicians so employed treated the patients without interference of the lay officers. Nor were the cooperative non-profit features of the plan calculated to commercialize or exploit the practice of medicine. In an actual, realistic sense, which I think is contemplated by the 'Healing Arts Practice Act', the doctors alone rendered the medical service. Only they were practicing medicine.

The situation was not altered by the contract whereby \$40,000 were furnished by Home Owners Loan Corporation. If we assume the transaction to have been a wrongful diversion of public funds, that did not outlaw the business of Group Health Association, Inc., any more than would have been the case had a private trustee misapplied trust funds to the benefit of Group Health Association, Incorporated. However, culpable, it would not have the effect

of transforming the corporate business into a lawless venture.

2. I do not think evidence of defendants' belief as to illegality of Group Health Association, Incorporated, or the reasons upon which it rested, is material. At best it could bear only on motive—not intent. However impelling the reasons which may lead one to commit a criminal act, they cannot legally justify or excuse, though they may mitigate. Motive, that ultimate desire or purpose which leads to the formation of the intent to do a prohibited act, is often easily confused with the intent itself; but the two are distinct, and only the latter presents a relevant issue. Then too, mistake of law will not ordinarily excuse. I do not understand that counsel dispute this general rule. But they do argue that one element of the offense here charged is a specific intent to restrain trade, hence that defendants' belief becomes material as bearing upon the particular purpose alleged. I doubt that as defined by the statute the offense technically involves a specific intent; but if so, it is not of a nature to bring the case within the very limited field in which ignorance or mistake of law can legally bear upon the intent.

3. Further, I understand the argument to be that an honest and reasonable belief that Group Health Association, Inc., was operating illegally would, under the appellate court's decision, afford the defendants a proper ground to justify restraints 'as reasonable regulations of professional practice' to protect and support their standards, methods, and economic interests. But the thesis is too broad. The language of the court has reference to the right of medical societies to reasonably regulate and discipline their members, to the end of raising and maintaining high standards of medical practice. Control, of course, is over the members only, and that must be limited to reasonable restraints in their practice of the profession. Even within that field I fail to see how defendants' belief, or the grounds giving rise to it, can have any relevancy to a question concerning the reasonableness of such regulatory controls. Reasonableness of belief is not the issue.

4. Finally, it is urged that the belief of illegality would supply a reason to support defendants' right of persuasion and argument in protecting their standards of professional

practice and their economic interests. Of course legitimate argument and persuasion was and is available in seeking those objectives. But the contention is beside the point, for no restraint based upon argument and persuasion is alleged, nor could it constitute a legal charge.

The reasons stated lead me to the conclusion that the proof offered by defendants is not admissible upon any of the grounds urged. Therefore the Government's objection is sustained and the offer rejected:

"The offer of proof, as I have treated it, is the written paper filed March 14, 1941, as orally amended, revised and explained by counsel for the defendants. Many of the documentary items contained in the written offer are already in evidence. They can be dealt with later in keeping with this decision.

(Signed) James M. Proctor, Justice.

Dated March 17, 1941."

Exception noted.

DR. RICHARD H. PRICE, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a practicing physician in active duty in the Naval Reserve, stationed at Norfolk, Virginia. I took my preliminary education at the Auburn, New York, High School; at Geneseo, New York, Normal School I received the medical student's qualifying certificate from the University of the State of New York; I graduated from the College of Physicians and Surgeons in Boston; I received most of my medical education at the University of Buffalo, New York; I did graduate work at Buffalo and post-graduate work at the University of Chicago and University of Pennsylvania, and have had ten years of hospital work. Besides internship my hospital work was mostly general medicine, internal medicine, neurology, and psychiatry. I have done medical work for many Government hospitals, United States Public Health Service, the Veterans Administration, and in hospitals at Pittsburgh, Philadelphia, East Norfolk, Massachusetts, Perryville, and Augusta.

I joined the staff of Group Health without pay in December of 1937 and went on their salary roll in January, 1938, in charge of general medicine, having done prior thereto X-ray work without pay. In 1938 I worked full time at Group Health from 9 in the morning until 6 p. m., and then the rest of the 24 hours, making calls in Virginia, Maryland, and the District. At first there were five doctors on the staff of Group Health, and then later possibly seven or eight. I generally made examinations and prescribed treatment, but didn't do major surgery, obstetrical or pediatric work. I made applications to two local hospitals, one in the spring of 1938, to Homeopathic, and one in the fall, to Garfield Hospital, seeking courtesy privileges in medical cases. This was my letter over my signature. I didn't acquire privileges at Homeopathic. I was given courtesy privileges at Garfield Hospital which covered only medical cases. I have never been a member of the District Medical Society. I have been a member of the AMA and ceased my membership in January, 1941.

I could not fix the date when it was that I obtained privileges at Garfield, but it was not very long after I made application; I think it was within a month after I made application. I am quite sure it was in the fall of 1938. I do not know whether I got them before December 20, 1938.

Q. Did you have any patients at all in any of the hospitals in Washington prior to December 20, 1938?

A. I am not certain about that.

Q. You are not certain?

A. No.

Mr. Leahy: Have you got the date, so that we can be sure of it?

Mr. Lewin: I think it was December 19.

Mr. Leahy: The day before?

Mr. Lewin: Yes.

By Mr. Leahy:

Q. You got your privileges on December 19, 1938. How long before that time did you make application for the privileges?

A. I believe it was about a month before.

Q. What difficulty did you have in obtaining privileges from Garfield Hospital, Doctor?

A. I did not have any difficulty in obtaining privileges.

Q. After you wrote the letter, and following a period of approximately a month, then what occurred?

A. I received the privileges asked for.

While I was on the staff of Group Health and particularly during the year 1938 up to December 20, 1938 I found that the quality of medical care which Group Health was able to give to its patients was not the care that I wanted to give patients. In other words, I did not think that it was adequate medical care. I would say that it was an attempt to practice medicine wholesale; and I think that adequate medical care would be the opposite. In other words personal service is the keynote of adequate medical care. My ability to give personal service to the patients that I had in Group Health was very limited. This was due to many factors. My final opinion was that it was due to the type of setup, rather than to any other possible factor. There were other factors, of course. It was an organization trying to take the place of the family physician, of the personal physician. That was the fundamental trouble with it. If I were sick in the middle of the night and would want medical care—if I were a member of an organization such as that and called for medical care and a doctor would come to see me who was not familiar with my case, and I would be too sick to go into details, I would not have the confidence in him that I would have in a doctor who knew me. If I may take just a minute or so—I believe we are not as individuals just the sum of our hearts and lungs and arms and legs; we are more than that. In other words, personality is more than just the sum of the things that we can determine by X-ray examination. If you are sick it is more important to me as a physician what you think about yourself than the way your heart sounds. I found upon visiting patients that they had had other doctors than myself. I had to attempt to care for more patients than I could give proper care to. During 1938 there were nearly a hundred patients who had been promised operations and were not given them during that time. The chief reason they were not given them was because the organization did not feel they had the money to pay for the hospitalization. I asked about this of the Medical Director many times. I didn't have any patients with Group Health whom I considered were my own. Concerning the failure to give operations

to patients. I was told by the Medical Director that it would be necessary to stall these operations off, which we did. The doctors I met, members of the Medical Society, were without exception very friendly to me, and kind in their attitude, and they didn't interfere with my practice with Group Health patients. I had occasion to seek advice and ask consultations with a member of the Medical Society, Dr. Thomas Lee. Dr. Lee visited the patients and sent me reports of what he found.

In 1938 I saw as many as 60 patients a day, and I, as a physician, couldn't render adequate medical service to as many as that. The other doctors on the staff were all overworked. I was called upon to see house calls in all types of cases except obstetric and pediatric ones. In making calls the patients didn't always receive the same doctor who had treated the patient formerly. The doctor making the call would not have the patient's record available and wouldn't know what the other doctor found or what the other doctor had prescribed; and the patient therefore would not have confidence in the new doctor. The doctor-patient relationship in Group Health was lost because we were attempting to practice wholesale.

Cross-examination.

By Mr. Lewin:

I had a serious heart case while at Group Health of a man over 40 years of age; in fact, I had two heart cases. In the man's case it was rather acute. When in private practice in Delaware I had available an electrocardiograph in the office of the duPont Company, and while at Group Health I had one. There is a great deal of discussion as to how much an electrocardiograph will indicate; it will not make a diagnosis, that takes a doctor. I felt the need in the heart cases of consulting a specialist, and called a member of the District Medical Society, Dr. Thomas Lee.

Q. Were you able to get a consultation with him?

A. May I express it in a few words?

Q. Won't you answer the question?

A. I cannot say no, and I cannot say yes.

Q. Were you able to get a consultation with him?

A. I called Dr. Lee on the telephone and asked him about the same case and he said, "Doctor, I would like to see the

case with you, but there is some question, which I hope will be settled soon, about the legality of Group Health. Until that is settled I would rather see the patient myself and send you a report."

Q. Is that all he told you?

A. At that time.

Q. Did you ask him to come in consultation with you?

A. I asked him to see the patient. I am not sure whether I asked him to see the patient with me or not. But whether I asked the question directly, as to whether or not he would see the patient with me, his answer was as I have told you. I had not even met Dr. Lee.

Q. Did you ask him to come in consultation with you over that case?

A. I can't answer that yes or no.

Q. Did you testify before the grand jury of the United States that returned this indictment?

A. I did.

Q. Were you asked to tell about this case that I am asking you about now?

A. That is right.

Defendants objected to the use of the grand jury transcript on the ground that it should be shown to the witness and the witness asked if that refreshed his memory. Objection overruled and exception noted.

Q. As a matter of fact, you testified before the grand jury on October 31, 1938, did you not, toward the end of your association with Group Health Association? Is that right?

A. So far as I remember. I see that it is that date.

Q. And that is after you had been with Group Health Association something over ten months; is that right?

A. That is correct; yes.

Q. I point to this answer which you gave there and ask you if that refreshes your recollection as to whether or not you called Dr. Lee in consultation with you?

A. I should say that I did.

Q. You told us that Dr. Lee expressed some doubt as to the legality of Group Health Association. Was that your testimony?

A. That is what he said on the telephone. It was not that he expressed the doubt. He said there was a question, but I don't think he had any doubt about it.

Q. Did he not say that he would be glad to come in consultation with you, but he could not do it because you were a Group Health doctor and it was a Group Health patient?

A. That is correct.

Q. Did he not give the reason for that the instructions of the local District Medical Society?

A. He said they questioned the legality of it.

Q. Did he not say that he had been instructed by the local Association not to hold consultations with any doctors on the staff of Group Health?

A. That is right.

Q. Is that what he said?

A. That is correct.

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Q. As a matter of fact, he did not consult with you, did he?

A. Not with me; no.

Q. He saw the patient independently, did he not?

A. Yes.

Q. And that was abnormal procedure, was it not, when you had asked a doctor to come in consultation with you?

A. Well, it is not exactly the usual view of consultation.

Q. What is the usual view?

A. I suppose the very meaning of the word would be coming together.

Q. Is there any advantage in that?

A. There is in many cases.

Q. But you were deprived of that advantage in this case, were you not?

A. That is correct, to that extent.

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Q. Did you not have another patient also seriously ill with heart trouble?

A. That is right.

Q. An old lady over 60 years of age?

A. Yes.

Q. And was she not so sick that you thought she was going to die in your office?

A. In the office of Group Health Association.

Q. And did you not try again to get Dr. Lee in consultation?

A. I did; I called him again.

Q. Did you not get the same response from him, that the District Medical Society would not let him come?

A. The response was the same as the other time.

Q. Have I correctly characterized what the response was, that the District of Columbia Medical Society had a rule which forbade him to have any consultation with Group Health doctors?

A. He did say that the District Society questioned the legality of Group Health; I am pretty sure, both times. He said he did not have anything against me personally; there was not anything personal at all. He simply said that he hoped the thing would be settled soon.

Q. Did he not say in that case that the Medical Society still prevented him from having a consultation with you?

Mr. Leahy: I object to this constant repeating, if your Honor please, and doing by indirection what your Honor has told him not to do directly.

The Court: While I do not think Mr. Lewin so intended, it might be open to that objection.

Mr. Lewin: It is simply a question of holding it in my mind. I want to be accurate about it. I might have transcribed this into notes, and there could not be any question about my using them.

The Court: It is a little difficult to decide. Proceed.

By Mr. Lewin:

Q. Will you answer that question?

A. Of course—would you mind repeating the question?

Q. Did he not tell you in connection with this old lady's case that the Medical Society still prevented him from having consultation with you?

A. Yes.

Q. Did he not say that he hoped matters would be straightened out so that you could have consultations in the usual way?

A. Yes, sir.

Mr. Richardson: I would like to suggest that this alleged grand jury transcript be taken away from in front of counsel. He is simply reading from it and avoiding your Honor's ruling with reference to it.

Mr. Lewin: I do not think I am.

Mr. Richardson: Why not put it out of the way?

Mr. Lewin: Why do you have any doubt about the authenticity of it? Why can I not read it?

The Court: It is pretty difficult for the court to control that. Suppose it were some other paper that he was refreshing his recollection from: you could not object to it. Suppose he had copied it off from these pages to another piece of paper. The difficulty has arisen from identifying that as the report of the grand jury proceedings. That is where the mistake arose, not by the use of the paper itself.

Mr. Richardson: Of course his producing it is not our fault; but having produced it and identified it, standing there and turning the pages and reading it leaves the impression that the grand jury testimony is being read to the witness.

The Court: The mistake has been made in identifying those notes as particular notes. It is just one of those things that will happen. I cannot wipe that out.

By Mr. Lewin:

Q. Is it not true that while you were with Group Health you had a number of other cases where you would have had the usual consultations but could not get them—let me change that—and could not have them because of this rule?

Mr. Leahy: What rule?

Mr. Lewin: The rule of the District Medical Society—just what Dr. Lee gave as his reason.

A. I do not recall any. There may have been.

By Mr. Lewin:

Q. Do you not recall other cases in which you would like to have had face to face consultations with specialists in the District of Columbia, members of the District Medical Society; if you could have obtained them?

A. I think there probably were.

Q. Were you not blocked from obtaining them or trying to obtain them because of this experience which you had with Dr. Lee in those two cases?

A. I think I can say yes to that, in the same way.

I was with Group Health as late as December 20, 1938. At that time I was a member of the AMA through the New-castle County, Delaware, Medical Society.

Q. Had you not received some instructions from the American Medical Association at that time that you would

have to change your membership to some other local society?

A. I do not recall that now; no, sir.

Q. Would you like to have your memory refreshed?

A. I don't recall anything about it right now.

Q. Let me show you this and see if it refreshes your recollection (handing transcript to the witness). Had you not had instructions from the AMA that you must apply to the District Medical Society for membership if you wanted to retain your membership in the AMA?

Defendants objected on the ground that it was immaterial and outside the scope of the direct examination. Objection overruled and exception allowed.

The Witness: I had a letter something about applying locally, but I do not think it said the District Medical Society.

By Mr. Lewin:

Q. What did it mean by applying locally?

A. If I recall now, it was a ruling of the American Medical Association that a doctor away from his former place of practice more than a year should apply in his new locality for membership rather than to maintain his membership in the old location.

Q. And your new locality was the District of Columbia, was it not?

A. Not my residence; Group Health was, yes.

Q. As a matter of fact, throughout the whole period of 1938, from the time you joined Group Health Association until October 31, 1938, were you not able to give better treatment to your patients, and superior treatment to your patients, while you were with Group Health, than you were able to do in your private practice in Delaware?

A. No.

Q. Let me see if I can refresh your recollection.

May I do that, your Honor?

The Court: I think you may, for that.

(Mr. Lewin handed transcript to the witness.)

A. In some ways, yes, but not in every way.

By Mr. Lewin:

Q. Did you not believe in October, 1938 that we, meaning Group Health Association; could give better medical care than could be given in private practice?

A. No; I don't believe that we could.

Mr. Lewin: Now, your Honor, may I confront him more directly? I would like to show this to your Honor (handing transcript to the court).

The Court: You may let him see it.

By Mr. Lewin:

Q. You have seen this portion of your grand jury testimony, have you not (indicating)?

A. Yes, sir.

Q. What is your testimony since you have seen this answer to my last question?

A. I still think that at the present time we could not give them as good attention.

Q. What did you think while you were with them in October, 1938, and throughout that whole period, from January, 1938, to October, 1938? What was your opinion then?

A. I did mention something about the patient's pocket-book, and so forth, that we did not have to worry about the patient's pocketbook. But, on the other hand, I feel certain now—

Q. Now, wait a minute. I am asking you what you thought then. That is not responsive.

Mr. Leahy: I object, if your Honor please. The proper thing to do is to say, "Were you not asked this question and did you not give this answer?"

Q. In October, 1938, were you not asked this question and did you not give this answer:

"What about the kind of treatment that you can give patients at Group Health as compared with the kind of treatment you could give patients in your private practice in Delaware?"

And did you not give this answer:—

Mr. Leahy: I object to the use of this transcript, which your Honor has again and again called to counsel's atten-

tion. It does not do any good for your Honor to give a direction; he just simply walks over it.

Mr. Kelleher: That is not a fair statement.

The Court: I will permit him to ask the question. I have seen the answer. Exception noted.

Q. Did you not give this answer to that question?

“Well, the treatment and care are superior here, because we have the association with other men in the various specialties and have complete and adequate laboratory facilities, and also because we can devote our entire time to medical work and not have to think about the patient's pocketbook and so on. So I believe we can give the patients better medical care.”

What is your answer?

A. That I did say that; yes.

Mr. Richardson: May we now inspect the transcript that counsel just read?

The Court: Yes.

Mr. Kelleher: May we approach the bench?

The Court: Not on that. Counsel has the right to see it.

Mr. Kelleher: All we mean is to be sure that the limitation is correctly expressed. They can see the part that is addressed to the witness.

The Court: Yes.

Thereupon, the portion of the grand jury transcript from which the witness was questioned was handed to defense counsel.

Redirect examination:

I described the condition of the patient to Dr. Lee over the phone and told him I would like to have him see the patient, and he said he would be glad to see the patient and send me a report. Dr. Lee said there was a question of the legality of Group Health, the association with which I was connected. Dr. Lee did so, sending me as soon as possible a full report, and the patient got better. With reference to the lady, Dr. Lee repeated again in substance what he had previously told me concerning my gentleman patient, and consulted with me over the phone, and that such discussion, over the phone, while not face to face, is a consultation.

I discussed with Dr. Lee over the telephone the condition of each of these patients; he went into full details about their conditions and his findings. He visited the lady patient as soon as possible, and she got better.

Q. Now, referring to these questions asked with reference to the character and type of care, do you recall whether at any time shortly after October, 1938, along about December, 1938, or January, early January, 1939, there came a time when you resigned from G. H. A.?

The Government objected on the ground it was beyond the scope of the indictment and improper redirect examination. Defendants stated there is an attempt made at impeachment and it can be shown that at or about the same time the same sentiments were expressed concerning Group Health.

Objection was sustained and exception allowed. The defendant then offered to prove through the witness that he had publicly announced his aforesaid reasons for resigning from Group Health; that Group Health later rehired him and gave him assurance the conditions of which he complained, and under which the witness believed he could not give adequate and complete medical care, would be corrected by the employment of more doctors; that on returning to the employ of Group Health these conditions were not cured by Group Health and he resigned again for the same reasons. This offer was refused by the Court and the exception of the defendants was noted.

I recall no other case of consultations with doctors over the telephone and such cases must be hypothetical rather than actual.

PERCY S. BROWN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am treasurer and trustee of the Twentieth Century Fund, and secretary treasurer and executive director of the Good Will Fund. I know very little about Health Economics Association, Incorporated, which was supported by

the Twentieth Century Fund, of which Mr. Rickcord was director. I am joint secretary and treasurer of the joint committee of the two funds—Twentieth Century and Good Will Fund, Inc. I identify Def. Ex. 31 as the auditor's report entitled "Twentieth Century Fund, Inc.—Report on Examination of Account, March 1, 1936, to February 28, 1937"; Def. Ex. 32 as the auditor's report entitled "Twentieth Century Fund, Inc.—Report on Examination of Account, March 1, 1937, to February 28"; Def. Ex. 33 as the auditor's report entitled "Good Will Fund, Inc.—Report on Examination of Account, December 29, 1936, to December 31, 1938"; Def. Ex. 34 as the auditor's report entitled "Good Will Fund, Inc.—Report on Examination of Account, January 1, 1939, to December 31, 1939"; Def. Ex. 35 as the auditor's report entitled "Good Will Fund, Inc.—Report on Examination of Account, January 1, 1940, to December 31, 1940"; Def. Ex. 35-A as the auditor's report entitled "Twentieth Century Fund, Inc.—Report on Examination of Account, March 1, 1938, to February 28, 1939"; Def. Ex. 36 as the report of the joint committee of the two funds entitled "Joint Committee, Twentieth Century Fund and Good Will Fund—Financial Report—November 9, 1938, through December 31, 1939"; Def. Ex. 37 as the report of the joint committee entitled "Joint Committee, Twentieth Century Fund and Good Will Fund—Financial Report—Twelve Months Ended December 31, 1940"; Def. Ex. 38 as the pamphlet issued by the Twentieth Century Fund entitled "The Twentieth Century Fund, Annual Report—1938 (March 1, 1938 to February 28, 1939)"; Def. Ex. 39 as the pamphlet issued by the Twentieth Century Fund entitled "The Twentieth Century Fund, Annual Report—1937"; Def. Ex. 40 as the pamphlet issued by the Twentieth Century Fund entitled "Twentieth Century Fund, Annual Report—1936"; and Def. Ex. 41 as the pamphlet issued by the Twentieth Century Fund entitled "The Twentieth Century Fund, Annual Report—1935". The audits were made by the auditor, Herbert P. French. The financial statements of the joint committee are the statements of the committee. The annual reports are the regular published annual reports of the Twentieth Century Fund. All of the papers are produced from the files and records of the Twentieth Century Fund and Good Will Fund, Inc., and the joint committee

of these funds. The reports of the joint committee were prepared in my own office by my own secretary, who was also the bookkeeper and who prepared them under my supervision and direction, and they are part of the joint committee records. As treasurer of the Twentieth Century Fund I am required to have an audit made every year, and copies of these audits are mailed to each of the trustees and filed. These audits were taken up at the annual meetings of the board of trustees of each organization and have them approved, and have become part of the records of each organization. I have a recollection of these records in so far as they pertain to Group Health Association and the entries made in these exhibits actually represent what they purport to represent, and are original records. I will initial the items which refer to Group Health. (Witness initials exhibits.) Health Economics Association, Inc., was set up by Twentieth Century Fund.

Q. And, Mr. Brown, of your own personal knowledge do you know whether it was the Health Economics, Inc., which was instrumental in having HOLC set up GHA?

A. This question was objected to by the Government as immaterial. Whereupon the defendants offered to prove by the witness and through the various reports and audits identified by him that Health Economics Association, Inc., was instrumental in setting up Group Health and furnishing it with financial support, for the purpose of showing that Group Health Association was subsidized, and to meet the testimony of the witnesses Penniman and Zimmerman. The evidence offered was, upon objection by the Government, refused and an exception noted.

Mr. Leahy: Just one more question, Mr. Brown: Showing you Defendants' Exhibit 33 for identification, I am drawing your attention to an item which is numbered 2, under "appropriations and Grants" and "Good Will Fund, Inc." Does this have anything to do whatsoever with GHA?

A. Yes, it does.

Q. Would you so indicate by your initials? (The witness complied.)

DR. ROSCOE GENUNG LELAND, a defendant, and witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a doctor. I reside in Chicago. I am director of the Bureau of Medical Economics of the American Medical Association and have been for the past ten years. I graduated from the Mendon, Michigan, High School, graduating from the University of Michigan, Department of Literature, Science, and the Arts, with a degree of Bachelor of Arts, in 1907; in 1909 I graduated from the Michigan University with the degree of Doctor of Medicine, took an assistant internship at the University of Michigan, and from 1910 to 1919 engaged in private practice of medicine for nine years in southwestern Michigan. During this period I entered the service of the Army of the United States, and served in the United States, France, and England, for 26 months, until May of 1919. Then I went on the staff of the Ohio State Department of Health as administrative head of the Division of Health, which division comprised the Bureaus of Tuberculosis, Hospitals, Public Health Nursing, Venereal Diseases, Social Protective Measures, and Care of Ophthalmia or Prevention of Ophthalmia in the newborn, for six years. I then went to Toledo, Ohio, as executive secretary of the Toledo Public Health Association, consisting of 26 private organizations, where I remained for 15 months. In 1927 I went to Chicago to become assistant in the Bureau of Health and Public Instruction of the AMA, with which Bureau, which is still in existence, I remained four years; the function of that Bureau is to provide information on health matters and the preservation of health and the prevention of disease for the public, circulating that information through the health magazine published by the AMA known as Hygeia. The Bureau also publishes a large number of publications on health subjects and has in charge a radio program, which latter has been devised to carry information concerning the medical profession and health to the public, particularly to children in grade and high schools. The Bureau publishes about 50 or 75 magazines, in addition to providing radio program items, which number several hundred. This literature is distributed free of charge on request.

Later I became director of the Bureau of Medical Economics of the AMA, formed in 1931, in which work I have three associates and 25 clerks. The Bureau undertakes to discover and collect information on sickness and the way in which people get their hospital and medical care, and meet their bills. It keeps vital statistics pertaining to births and deaths and the types and amount of diseases. A large amount of this information is collected from official organizations such as the U. S. Census Bureau, International Labor Organization in Geneva, Switzerland, and a large number of organizations that are engaged in the collection of information pertaining to vital statistics, and also from medical organizations that have conducted studies in various parts of the country. Some articles of the Bureau are published in the Journal. In publishing articles the Bureau of Medical Economics tries definitely to present both sides. On some subjects there is probably only one side. In publishing scientific articles we endeavor to bring to the examination of the subject under consideration the highest degree of scientific treatment in order to arrive at a most sound judgment.

I first heard of Group Health at the AMA meeting at Atlantic City in June 1937. I don't recall seeing a copy of the letter of Major General Ireland (Gov. Ex. 295-A) that was said to have been sent to my Bureau, and which was read here at this trial. Dr. Woodward at the convention made a brief report or statement on Group Health to the House of Delegates. I don't recall any action taken concerning Group Health at the June meeting. The next time I heard of Group Health was when I was asked to accompany Dr. Woodward to Washington in July, 1937 to confer with members of the District Medical Society. The only instructions I had when I came to Washington then were to secure as much information as possible about the nature and operation of Group Health. I had made no effort prior to that time to find out anything about Group Health, and knew nothing about the existence of such an organization. I came to Washington in July, 1937, and attended a meeting of the Medical Society. The only physicians I remember there were Dr. Conklin, Dr. Macatee, Dr. Hooe, and Dr. McGovern. I had met Dr. McGovern and Dr. Macatee but not Dr. Hooe prior to the meeting. I had met Dr. Christie in connection with some work on the cost of medical care; I have never met Dr. Custis, Dr.

Martel; Dr. Neill, Dr. Reede, Dr. Sprigg, Dr. Stanton, Dr. Warfield, Dr. Wilson, Dr. Young prior to the trial. I met Dr. Groover in 1937, Dr. Mattingly in 1937 and Dr. Yater in 1935. At meetings of the District Society I obtained no further information than what I had already had concerning Group Health, which pertained to the articles of incorporation and some information about financing. The only other detail of the meeting I remember is that Dr. Woodward suggested that the District Society ought to have counsel. I made a suggestion for the Medical Society itself pertaining to a method by which prepayment medical care could be organized. I never attended any other meetings of the District Medical Society concerning Group Health. I have attended other meetings of the District Medical Society. On returning to Chicago I made a verbal report of the visit to Washington to Dr. West, and did nothing further. From the time of my talk with Dr. West I have done nothing in any way, shape or form with reference to Group Health. In November, 1938, I discussed with a committee of the District Medical Society a plan to provide people of the low-income group with medical services on a prepayment basis. The Society was formulating a plan as the outgrowth of a plan they developed in 1935. I never discussed with the officers or members of the District Society any matters, ways or means of anyone hindering or restraining Group Health and had no correspondence on the subject. I paid no attention to Group Health after the meeting in July, though I may have asked an occasional question or two of Dr. Woodward concerning it.

I attended a meeting on November 6, 1937 with Drs. McGovern, Hooe, West, and Woodward, but took no part in that meeting and did not say a word. In 1937 and 1938 I had two assistants in the Bureau, trained to take care of certain studies and certain correspondence. The correspondence of the Bureau varies from 3,000 to 8,000 letters a year. A great deal of this correspondence is inquiries necessitating considerable research in order to return intelligent and satisfactory replies. The Bureau has no jurisdiction to fix any policy concerning group payment or prepayment plans of medicine as policies are established by the House of Delegates of the AMA. In 1934 the House of Delegates adopted ten principles intended to assist state and county medical societies in the organization of plans of

prepayment care. Later the House of Delegates also adopted ten principles which apply to the organization and administration of group hospitals. The only opposition that the Bureau has had, which was established by the House of Delegates, is opposition to compulsory sickness insurance. No other policy whatsoever has characterized the work of the Bureau.

Mr. Laux and Mr. Simons, who worked in my Bureau, have carried on a considerable amount of correspondence I have never seen. I had no knowledge, until I heard it read at the trial, of the contents of the correspondence dictated by Mr. Laux and Mr. Simons. I read only bits of correspondence coming into the Bureau which I felt I should answer myself and sometimes correspondence which I pass on to associates to handle. Gov. Ex. 265 looks familiar as it bears the stamp of the Bureau. I have no recollection that I ever read it myself. I wrote Gov. Ex. 264. It is an answer to Gov. Ex. 265. Dr. Arthur J. Cramp was the director of the Bureau of Investigation of the American Medical Association, an independent bureau that collects information concerning the operations of quacks, charlatans, patent medicines and a lot of curious devices for the treatment of people. The information collected is published in the Journal of the AMA.

Defense counsel read Gov. Ex. 265 to the jury as follows:

"March 16, 1934.

DEAR DR. CRAMP:

I am enclosing a copy of a circular which we have just received through our Los Angeles representative. This is designed to interest our Los Angeles agencies as a group to avail themselves of whatever service this medical clinic has to offer at the fee schedule, as I understand, which is quoted herein.

Before instructing our general agent in Los Angeles as to what they shall do relative to this matter, I should like your opinion concerning the ethics of this group, and whether the principle on which such a medical group is operated is consistent with the highest medical ethics.

Doubtless, there is available to you full information concerning the staff of physicians who make up this particular medical group. In so far as you know, are they all men of ability and integrity?

I should greatly appreciate your opinion concerning this matter and any recommendation which you may have regarding this type of medical practice.

Very truly yours, Ernest J. Dewees, Assistant Medical Director, Providence Mutual Life Insurance Company."

Defense counsel read Gov. Ex. 264 to the jury as follows:

"March 23, 1934.

DEAR DR. DEWEES:

The Los Angeles Medical Association, I believe, will be glad to give you a more recent report on the personnel and activities of the Ross-Loos medical group than can be given from this bureau.

I am personally of the opinion that the methods used by many of the organizations similar to this one do not contribute to the best interests of either the public or medical profession.

The Secretary of the Los Angeles Medical Association is Dr. Harry H. Wilson, whose office is at 1925 Wiltshire Boulevard, Los Angeles, California.

It may be of some interest to you to note a newspaper report under date of March 6, 1934, states that Dr. H. C. Loos and Donald Ross were banished from the Los Angeles County Medical Association Monday night for engaging in a plan of health insurance.

For that and other reasons, I believe it might be more satisfactory for you to secure the information you desire from the Los Angeles Medical Association.

Sincerely yours, R. G. Leland."

In writing this letter we had information concerning the organization and operation of the Ross-Loos medical group, but this information concerning the newspaper item was entirely news. We had nothing on which to verify that statement, therefore, it seemed to me that checking with the local people was the wise procedure. The AMA has never taken any action against the Ross-Loos Clinic. The AMA had no jurisdiction over the activities of the Los Angeles Medical Association. The question of the Ross-Loos Clinic came to the Judicial Council of the AMA late in 1935 or in 1936 as an appeal from an action of the California

Medical Association. The appeal was by Doctors Ross and Loos. The AMA reversed the action of the California Medical Society and I believe that Doctors Ross and Loos are members of the AMA at this time.

In stating to Dr. Dewees that: "I am personally of the opinion that the methods used by many of the organizations similar to this one do not contribute to the best interests of either the public or the medical profession," I referred to information that had come to the Bureau of Medical Economics concerning a considerable number of organizations that had become legally involved in California. I believe there were some 143 of such organizations in California, and many of them had become organized in late 1933, or early 1934—a few some years before that—and about 1933 some of those organizers were indicted and sent to prison. There was a list of 143 of them that were being investigated and, as I recall it, at least six or seven individuals were finally indicted and sentenced.

There are some 2,000 or more medical industrial care plans. There are 300 student health services in colleges and universities; about 300 organizations of the type known as mutual health and hospital organizations, called consumer groups. About 500, including the 143 from California, of these plans are operating. There are 19 flat-rate plans used by hospitals; 54 hospital insurance companies; 78 group hospital plans operating, and 60 more proposed; 350 group medical plans, 24 union sick benefit plans, and 350 rural medical plans sponsored by the Farm Security Administration. The only action taken by the AMA concerning these plans is to secure information about them and, in some instances, to publish the facts concerning them. As director of our Bureau I have taken no action against any one of these plans. The methods used by many of these organizations, as I mentioned in my letter to the Providence Mutual Life Insurance Company as not tending to contribute to the public interest, were those used by institutions in California which took money away from people and were not in existence and did not give the service when the people needed the service.

I wrote Gov. Ex. 268 in reply to Gov. Ex. 269.

Defense counsel read Gov. Ex. 269 to the jury as follows:

"May 25, 1934..

GENTLEMEN:

We have out here in Los Angeles a medical group called the Ross-Loos medical group. Could you advise me if this organization meets with the unqualified endorsement of the AMA? I have been of the opinion that it was not exactly ethical and for that reason didn't care to endorse it.

Thanking you for this information,

Yours truly, George Horton."

Defense counsel read Gov. Ex. 268, just identified by Dr. Leland as his reply, dated May 31, 1934, to the inquiry (Gov. Ex. 269) to the jury as follows:

"The Los Angeles Medical Association, I believe, will be able to give you a more recent report on the personnel and activities of the Ross-Loos medical group than can be given from this bureau.

The Secretary of the Los Angeles Medical Association is Dr. Harry H. Wilson, whose address is 1925 Wiltshire Boulevard, Los Angeles, California.

I am personally of the opinion that the methods used by many of these organizations similar to this one do not contribute to the best interests of either the public or the medical profession.

It may be of some interest to you to know that a newspaper report under date of March 6, 1934, states that Doctors H. C. Loos and Donald Ross 'were banished from the Los Angeles County Medical Association Monday night for engaging in a plan of health insurance.'

For that and other reasons I believe it might be more satisfactory for you to secure the information you desire from the Los Angeles Medical Association."

In expressing my opinion concerning many of these organizations, I also had in mind in addition to the situation heretofore stated that many of them used advertising and solicitation, which are not considered ethical practices, as they afford opportunity to make exaggerated and unwarranted claims for the advertised benefits, and the same holds true as to solicitation, which involves a certain amount of mouth advertising.

I have no personal recollection at the present time of Gov. Ex. 271, but Gov. Ex. 270 is a letter which I wrote in reply to Gov. Ex. 271.

Defense counsel read to the jury as follows:

Gov. Ex. 271 is a letter of inquiry from R. H. Ludden, M. D., physician and surgeon, Viroqua, Wisconsin, directed to the American Medical Association, attention of R. G. Leland.

June 2, 1934.

"GENTLEMEN:

Could you please send me information on the Ross-Loos medical group, Los Angeles, California?

Yours very truly, R. H. Ludden, M. D."

Gov. Ex. 270 is a carbon of a reply which Dr. Leland states he has written to Gov. Ex. 271. It is dated June 5, 1934, directed to Dr. Ludden. It was read from, as follows:

"The Los Angeles Medical Association, I believe, will be able to give you a more recent report on the personnel and activities of the Ross-Loos medical group than can be given from this Bureau."

Q. Now, Doctor, have you seen the Ross-Loos Clinic since 1932, when you stated you visited it?

A. I have not.

Mr. Leahy:

"I am personally of the opinion that the methods used by many of the organizations similar to this one do not contribute to the best interests of either the public or medical profession."

Then he gives the name of the Secretary of the Los Angeles Medical Society; then the same paragraph as to the newspaper account of March 6, 1934, and concludes:

"For this and other reasons, I believe it might be more satisfactory for you to secure the information you desire from the Los Angeles Medical Association."

In 1934 I learned from a newspaper account that Doctors Ross and Loos had become involved somewhat with the Los Angeles Medical Association and that was why I referred some inquiries to Los Angeles Medical Association.

I don't recall Gov. Ex. 273 at this time, but I wrote Gov. Ex. 272 in reply:

Defense counsel then read to the jury as follows: .

This in an inquiry from Drs. Rigby and Hargrave, at Shreveport, Louisiana; it is Gov. Ex. 273, dated January 22, 1935. It is addressed to the American Medical Association.

"GENTLEMEN:

Due to the fact that I am chairman of the Economics Committee, of the Shreveport Medical Society, I desire to get all the information that is obtainable on Medical Economics. We have, in this vicinity, some members of the medical fraternity, who do not belong to our local or state society and who engage in extensive advertising to further their practice of medicine. We have one, who claims to be a Fellow of Proctology, and there are others whom I could name operating in various branches of medicine. I also have in my possession, some information from the Ross-Loos Medical Group, Los Angeles, California. I would like to know if the Ross-Loos Medical Group of Los Angeles, are an ethical group of Doctors and if they belong to organized medicine.

Any information you may be able to give me will be appreciated."

To this Dr. Leland wrote the original of which Gov. Ex. 272 is a copy, dated March 4, 1935.

Gov. Ex. 272 read by defense counsel to the jury as follows: (Excerpt.)

"The Los Angeles Medical Association, I believe, will be able to give you a more recent report on the personnel and activities of the Ross-Loos Medical Group than can be given from this bureau.

The Secretary of the Los Angeles Medical Association is Dr. Harry H. Wilson," giving his address.

"I am personally of the opinion that the methods used by many of the organizations,"

and the same paragraph again.

"It may be of some interest,"

and the same paragraph.

"For this and other reasons, I believe it might be more satisfactory for you to secure the information you desire from the Los Angeles Medical Association.

Under separate cover I am sending you a complete set of the publications of this bureau which I trust will be of interest and benefit to you."

During the time between my letters of June, 1934 and this letter in March, 1935 I had received no additional information on the Ross-Loos Clinic. These various inquiries did not induce me to make any investigation of the Ross-Loos Clinic for or on behalf of the AMA. In 1932 I made an investigation of the Ross-Loos Clinic on my own initiative. I called at the Ross-Loos Medical Clinic where I was received very cordially. I met Doctors Ross and Loos and a considerable number of the staff. I was shown the clinic building and the facilities used for diagnosis and treatment of patients, to acquaint me with the methods and personnel of the Ross-Loos medical group. This was a routine visit made shortly after the organization of the Bureau of Medical Economics for the purpose of collecting information. I visited many other groups that year. We collected additional information and published it. The AMA never took any other action on this information.

I wrote Gov. Ex. 274. It was in reply to an inquiry from Mr. Baker, Executive Secretary of the Hennepen County Medical Association, Minneapolis, Minnesota and my letter is dated April 30, 1935.

Defense counsel read Gov. Ex. 274 to the jury as follows:

"DEAR MR. BAKER:

The Kansas City Industrial Hospital Association agreement with the Butler Manufacturing Company is but another example of similar types of contract practice that exist in other parts of the United States. Patients are not given freedom of choice of physician but must accept the physician furnished by the Industrial Hospital Association. The agreement states that members may at their own expense call or employ their own physician. Nothing is said as to the manner in which hospital care will be provided, although it is inferred that beneficiaries must be taken care of in hospitals of the Association in the event hospital care is necessary.

This type of organization has been brought to the attention of the medical profession on several occasions. It is one which, in my opinion, ought to be discouraged.

Under separate cover I am sending you several copies of our reprint 'New Forms of Medical Practice,' in which several types of this form of arrangement are discussed.

Sincerely yours,"

When I said that it was similar to other forms of contract practice that existed in other parts of the United States I meant forms of contract practice that existed in various parts of the United States for many years; but there seems to have been a concentration of contract practice of a low type in certain sections, some in West Virginia; some in the State of Washington, and some in Oregon; and on the basis of the performances of these types of contract practice I believe that those particular types ought to be discouraged. Those types of contract practice, group and individual, were organized to provide a certain amount of service under contract at a very low cost. It was the custom for others, individuals or groups, to organize similar services with contracts to provide medical care or hospital care, or both, offering either the same amount of service for less money, or more services for the same amount of money. In some cases this competition, if it can be called that, or solicitation, went from bad to worse by constantly lowering the quality of medical care offered. I could give you some examples; some of the bad features. I refer to such an example as the amputation of a man's arm, instead of carrying the man through to the reasonable restoration of that arm to function, because it would require less time than the process of treatment and rehabilitation. There were a large number of these low grade organizations all over the country.

Gov. Ex. 277 refers to a situation in Cincinnati, Ohio. A representative of the Academy of Medicine of Cincinnati had made some investigation of prepayment plans and has proposed a special form of prepayment arrangement to be organized and operated in Cincinnati.

Defense counsel read Gov. Ex. 277 to the jury as follows:

On the stationery of the Academy of Medicine of Cincinnati, Cincinnati, dated March 2, 1936, to Dr. Leland:

"The Academy of Medicine of Cincinnati is confronted with the following problem:

Dr. George H. Cook, after some service with the Ross-Loos at Los Angeles, is preparing to start such a clinic in Cincinnati. Some of the members of the Academy of Medicine whom he has approached have asked the Academy whether an association with this clinic will jeopardize their standing with the Academy. The Executive Council of the Academy has ruled that this question must be answered by the entire County Society. This will be brought to a vote on Tuesday, March 10th. Have you any information about this clinic or have you any experience which will guide us in handling this matter?

The Executive Council will meet on Friday afternoon, March 6th, and I would appreciate hearing from you by that time if possible.

Thanking you in advance for any information you can give us, and with very best wishes, I am

Sincerely yours, Edward D. King, President."

Gov. Ex. 276 is the letter which I wrote in reply.

Defense counsel read Gov. Ex. 276 to the jury as follows:

That's numbered Gov. Ex. 276 and runs to Dr. King, President of the Academy of Medicine of Cincinnati, dated March 4, 1936.

"This is to acknowledge receipt of your letter of March 2nd, relative to the formation of a clinic similar to the Ross-Loos Medical Group in Los Angeles.

The effect of association with such a group by members of the Academy of Medicine of Cincinnati must be determined by the Academy, which has the original jurisdiction over the ethical conduct of its members."

Q. Doctor, why did you write that to Dr. King?

A. Well, because it's true.

Q. Did you have anything to do with the ethical conduct of members of the Academy in Cincinnati?

A. Only in so far as I might discuss the matter with the Secretary or some member of the Academy. I had no authority nor jurisdiction over the members of the Academy of Medicine of Cincinnati.

Q. For instance, if the Academy of Medicine of Cincinnati wanted to start a clinic, what jurisdiction did your bureau have over it?

A. Not a particle.

Q. What jurisdiction did the American Medical Association have over it?

A. Nothing, nothing.

Q. In other words, was the Academy entirely independent of you and the American Medical Association, anything it wanted to do?

A. Yes, sir.

Q. (Continuing reading from Gov. Ex. 276): "I believe that you should bear in mind that the press, which has socialistic leanings, has energetically taken up the cudgel for the Ross-Loos Medical Group."

Now, what did you mean by that statement, Doctor, when you said: that the press which had "socialistic leanings"?

A. Well, I think many of us have seen certain publications that have a very liberal view and that have from time to time published articles and have assumed the attitude that the socialization of medicine would be a good thing for the people and for the profession of the United States.

Mr. Leahy (Reading): "An attempt is being made to show that the Ross-Loos method is the most desirable method of providing medical care,

I believe that in the discussion of this matter, your Executive Council and the membership of the Academy as well, should bear in mind the Ten Principles adopted by the House of Delegates at the Cleveland Session in 1934, as a measure of the necessity for, and the method of providing medical services. For example, the 3rd Principle states, 'Patients must have absolute freedom to choose a legally qualified doctor of medicine, who will serve them from among all those qualified to practice and who are willing to give service.' Since I do not have before me the details of the proposal by Dr. George H. Cook, I do not know whether his plan contemplates such a freedom of choice of physician.

Again, the 8th Principle states, 'Any form of medical service should include within its scope all legally qualified doctors of medicine of the locality covered by its operation, who wish to give service under the conditions established.'

Under separate cover, I am sending you a copy of the Special Report of this Bureau entitled, 'Medical Service Plans,' adopted by the House of Delegates at the Atlantic City Session. However, I am calling your special attention to these two principles.

There are other factors which must be considered in examining any proposal to supplement the regular practice of medicine. In many instances these factors may not be apparent in the proposals themselves, but develop later in the operation of the scheme. I refer particularly to the quality of medical care and other methods by which subscribers or participants are obtained. In many schemes which have come to my attention, the amount charged for the medical care has been so small that there could be but one outcome—a reduction in either the amount or the quality of the medical services given, and in many instances, both these factors are involved. The manner of securing subscribers involves a practical application of the Principles of Medical Ethics, especially as these principles pertain to solicitation and unfair commercial competition.

It is my understanding that the Ross-Loos Medical Group was composed of a number of very competent physicians."

By Mr. Leahy:

Q. Did you believe that when you wrote it, Doctor?

A. I did.

Mr. Leahy (Reading): "As far as I know, the quality of medical care given seems to be good. I am unable to give you all the details of the operation of this medical group or their methods of securing subscribers. However, I am enclosing a copy of an article which appeared in the Los Angeles City Employees Magazine. I am also enclosing a copy of a pamphlet of Information for Subscribers of the Ross-Loos Medical Group.

It is my further understanding that the Ross-Loos Medical Group in Los Angeles entered into contracts with certain groups of municipal employees and others, under the terms of which medical services would be furnished by the members of the Ross-Loos group for certain stipulated sums. Furthermore, it is my understanding that each member of the groups concerned was required to pay a certain amount each week or month, and that this sum would be used to pay the cost of service rendered by the Ross-Loos clinic. I am informed that the Los Angeles County Medical Association objected to the operation of this plan, by the Ross-Loos group, and the charges were finally preferred against Doctors Ross and Loos. These charges were substantiated by the Council of the Los Angeles Medical Asso-

ciation, and on appeal, the California Medical Association upheld the action of the Los Angeles Medical Association whereby Doctors Ross and Loos were expelled from membership. This case was appealed to the Judicial Council of the American Medical Association. The decision of the Council may be found in the Journal of January 25, 1936," the volume stated. "You will note, however, that the Judicial Council decision expresses no opinion as to the guilt or innocence of the appellants in connection with any unethical practices alleged and charged against them.

If at any time you believe I may be of some assistance to you, I shall be pleased to help to the limit of my ability."

In 1935 the Bureau published a report entitled "Medical Service Plans," listing the service plans which had come to our attention throughout the United States in the form of state medical society plans, county medical society plans, and the various classifications of services which they gave, either for indigents or low-income groups, including post-payment and prepayment plans. In 1935 there were very few plans operated by the medical societies throughout the country for the prepayment of the cost of medical care. There were plans being operated by groups of different kinds. Perhaps they might be designated either consumer or producer prepayment groups, but there were only a few throughout the country.

I think I have seen Gov. Ex. 280. Gov. Ex. 279 is a letter from R. A. Swink, Executive Secretary of the Academy of Medicine of Cincinnati, in which he transmits to me the letter marked Gov. Ex. 280, relative to the proposal of Dr. George H. Cook in Cincinnati to organize a prepayment plan. Gov. Ex. 278 is a carbon copy of a reply which I made to Mr. Swink.

Defense counsel read Gov. Ex. 279 to the jury as follows:

Gov. Ex. 279 has been just identified as a letter dated March 20, 1936, from Mr. Swink, the Executive Secretary, to Dr. Leland, on the Academy of Medicine of Cincinnati letterhead:

"Some days ago Dr. Edward King, President of the Academy, wrote you for some information pertaining to the Ross-Loos Clinic at Los Angeles. We very much appreciated the information furnished by you.

In order that you might be acquainted with what has occurred here recently, I am enclosing a carbon copy of a letter sent to Charles S. Nelson, Executive Secretary of the Ohio State Medical Association, in which a fairly complete statement is given of just what has occurred to date. I feel certain you would be interested in knowing of this action.

If you have any special pamphlets, or can give me any other references that would enable us to make a more complete statement of organized medicine's viewpoint on the whole insurance scheme, I would very much like to have it.

Yours truly, R. A. Swink."

Defense Counsel read Gov. Ex. 280 to the jury as follows:

It is dated March 19, 1936, and numbered Gov. Ex. 280, on the same stationery head, directed to Nelson:

"Last fall Dr. George H. Cook, a graduate of the University of Cincinnati, but not a member of the Academy here, made it known to some of the members of Council and to others, that he had just returned from Los Angeles, where he had spent some months getting complete information on the operation of the Ross-Loos Clinic. He stated that it was his intention to organize a similar group in Cincinnati.

Reports of his activities were heard from time to time, mostly in the form of rumors, until early in February of this year when a letter was received from him by Council, together with a prospectus of his proposed group. In this letter, he asked Council to let him know what attitude would be taken toward members of the Academy who might become members of his group.

Immediately upon receipt of this letter and prospectus, the entire matter was referred for study to the standing committee on the Cost of Medical Care, of which Dr. Albert H. Freiberg is chairman. After many hours of consideration covering several meetings, this committee recommended to Council that it should reply to Dr. Cook by saying that a request such as he had made, could be considered only when presented by a member of the Academy; and secondly that if such a request is later made by a member, it would then be advisable for Council to call a special meeting of the Academy, so that the entire membership

could participate in the discussion and have a final vote as to the policy of the Academy in respect to this matter.

These recommendations were adopted by Council and Dr. Cook was accordingly notified of the action. Within a few days thereafter, a letter was received from Dr. E. E. Rhoads, a member of the Academy, stating that he was seriously considering the invitation to become a member of Dr. Cook's group and asking whether 'belonging to the George H. Cook Medical Group will in any way jeopardize my standing in the Academy.' Upon receipt of Dr. Rhoads' letter, Council called a special meeting and decided to make consideration of this matter a special order of business to come before the Academy at its regular meeting on March 10, 1936. A copy of notice sent to all members is enclosed herewith.

Interest in this matter attracted a large attendance at the meeting on March 10th. A rough count indicated that there were approximately 325 to 350 members present. As a result of thorough discussion on the part of Council at two special meetings prior to this meeting of the entire Academy, Council prepared a statement to be read by the President, Dr. King, by way of introduction to the entire matter and a statement of the issues involved.

After giving a brief history of the events leading up to the calling of the meeting, Council called attention in its statement to Article VI, Section 2 of the 'Principles of Ethics' of the A. M. A., and then informed the Academy that, in the opinion of Council, the thing for the members to do was to answer certain questions, with the understanding that those answers would become the rules which Council would feel obliged to enforce in a situation that might arise as suggested in Dr. Rhoads' letter. The questions on which Council desired an answer were these:

1. Does practice under a prepayment group plan such as is being here proposed, and which does not include all of the legally qualified physicians of the community, but restricts itself to a small group, constitute a violation of Article VI, Section 2 of the 'Principles of Ethics' of the AMA?

2. Shall membership in the Academy of Medicine of Cincinnati be withheld from physicians who are practicing in violation of this rule?

3. Shall violation of this rule by a member of the Academy constitute sufficient reason for the termination of his membership?

It is not necessary for me to relate the entire discussion that occurred at that point other than to say that a motion was immediately made by Dr. Robert Carothers to the effect that practice under a prepayment group plan such as was being proposed, does constitute a violation of Article VI, Section 2 of the 'Principles of Ethics.' That motion was by way of saying yes to question No. 1. After prolonged discussion on the motion in which only one member, Dr. Samuel Iglauder, spoke in opposition to the matter, a rising vote was taken and practically everyone present voted in favor of the motion. There were 3 or 4 who voted against the motion and possibly 15 or 20 others who did not vote either way.

With the first motion disposed of, motions on the other two questions were immediately put and voted on, with similar results.

The enclosed clipping from the Enquirer on the morning following the meeting is indicative of the reports appearing in all the newspapers of the action taken. The next day after that is when the editorial appeared in the Enquirer entitled, 'A Danger Involved,' and in which the Academy was accused of 'boycotting' any physician who undertakes to give medical service on a group basis.

I trust that this rather lengthy review of the situation will be of interest to you and if you have any suggestions or comments to make, I am sure, Council will be very glad to receive them.

Yours truly,

R. A. Swink."

I did not try to give Mr. Swink, Mr. Nelson or Dr. King any advice with reference to this matter. The matter was completely within the jurisdiction of the local society. Gov. Ex. 278 dated March 25, 1936 is my letter which I wrote in reply to Mr. Swink.

Defense counsel read Gov. Ex. 278 to the jury as follows:

"I am greatly obliged to you for your letter with the enclosed carbon copy of your communication to Mr. Nelson. I am personally of the opinion that the Academy of Medi-

cine of Cincinnati proceeded in a wise course on the matter under consideration.

This Bureau is now preparing a publication on 'Economics and the Ethics of Medicine.' This publication will probably bear more directly than any other one we have on the question under discussion, however, I am unable to give you the date at which this will be ready for distribution. In the meantime, I am enclosing some publications of the Bureau in the hope that they may be of some help to you."

When I stated that I am personally of the opinion that the Academy acted wisely, I referred to the procedure that they had adopted in arriving at the end. They had made an investigation, they had framed their own questions, and they had put them to the vote of their own membership, and the membership had expressed itself. With that expression I had only an academic interest.

I received Gov. Ex. 259 from Dr. Conklin and I wrote Gov. Ex. 260 in reply.

Defense counsel read Gov. Ex. 259 to the jury as follows:

This is on the Medical Society of the District of Columbia stationery, and it is dated June 5, 1937, over the signature of Dr. Conklin, and addressed to Dr. Leland:

"I am enclosing herewith a plan that has recently come to our attention for development of prepayment medical service in governmental bureaus. The potentialities of such a plan, if and when it is put in force in the capital city, should be readily understood.

With hopes that I will have the pleasant opportunity of seeing you during the coming week, I am,"

Postscript:

"I regret that I was not 'at home' when you called at my office recently. I am hoping for better luck next time."

I called at Dr. Conklin's office several times. I remember that I called once and he was out. I don't connect it at all with Group Health, because I called on the secretary several times as a matter of courtesy and interest and on matters of medical society affairs, having nothing to do with Group Health. Defense counsel read Gov. Ex. 260, dated August

18, 1937, from Dr. Leland to Dr. Conklin, to the jury as follows:

"Since your letter arrived just as I was leaving the office for my vacation, I have had no opportunity to answer it until today.

The suggestion which I made at the committee meeting is, in my opinion, a very simple one, involving nothing but cash payments to those who wish to participate. It is based largely on the type of arrangement that has been in effect for many years and operated by health and accident insurance companies."

By Mr. Leahy:

Q. To what are you referring in that paragraph, Doctor?

A. I am referring to the principle of cash payments made by health and accident insurance companies on the basis of a contract between them and their policyholders, by which they agree to pay in cash directly to the insured the amount of any claims that are made against the company under a contract.

Q. Well, I notice you state, "The suggestion which I made at the committee meeting."

A. I made the suggestion at the committee meeting, which was in July of 1937, the suggestion to the Medical Society that they might take under advisement the idea of organizing a cash indemnity plan which would be similar to the cash indemnity plan operated by health and accident insurance companies, if they could qualify under the laws of the District.

Mr. Leahy (Reading):

"Briefly, the plan would be for any group who desires to spread the cost of medical care to organize a benefit association or a mutual insurance company. The dues or premiums per member would depend on the amount of benefits to be provided. Benefits would be paid in cash to the beneficiary. They should be limited to \$250 or \$400 or \$500 in any one year, but the benefits for any illness should not exceed 75 to 80 percent of the total amount of the medical and hospital bills for that illness.

There would be no medical panel; every member would have the right to choose any physician in the District of

Columbia or anywhere else in the United States; there would be no designation of approved hospitals; the patient would be perfectly free to choose his own hospital or go to the hospital to which his physician ordinarily takes his patients; physicians in hospitals would submit their bills to the organization according to the regular schedule of charges.

The sole function of the organization would be to collect the dues or premiums from the members and to pay in cash to the members the amount of claims for medical or hospital services up to a specific limit for any one year and not to exceed 75 or 80 percent of the medical or hospital bills incurred for any single illness. Physicians and hospitals would then take their chances on collecting from the patients the amounts paid them for claims. There should be some sort of an identification card to indicate that the patient is a member of the organization. This would serve only to apprise the physician or the hospital that the patient would be reimbursed up to 75 or 80 percent for the services rendered.

If the District Medical Society chose, it might authorize a 10 or 15 percent reduction from the regular fees for members of such an organization providing such an organization would be willing to make a settlement with the patient and physician or hospital jointly. This is being done in some places, and apparently works entirely satisfactorily. In Iowa, for example, the reimbursements to members for the cost of hospitalization is made by check payable jointly to the member and the hospital. This affords an opportunity for the hospital to collect since the member cannot cash the check without the signature of the hospital.

If there are any further details in connection with this which you desire, I shall be glad to do my best to clarify such points as may not be entirely clear.

"Sincerely yours,"

And down in the bottom is marked: copy to Dr. Woodward.

The notation at the bottom shows that a copy was sent to Dr. Woodward.

I received Gov. Ex. 258 and Gov. Ex. 257 is my reply. Defense counsel read Gov. Ex. 258 to the jury as follows: Gov. Ex. 258 is a letter from Dr. T. J. Williams, Evanston and Chicago, Illinois, dated July 21, 1938, to the American Medical Association, Chicago, Illinois:

"GENTLEMEN :

Will you be kind enough to send me what information you have relative to the doctors' Donald Ross and Clifford Loos, private group clinic in Los Angeles, as well as the Trinity Hospital group in Little Rock, Arkansas, and other similar groups who provide medical service, hospitalization, drugs, services of specialists, etc., to the man and his family for a specified monthly payment.

Kindly send same to the above Evanston address. Thanking you,

T. J. Williams."

Defense counsel read Gov. Ex. 257 to the jury as follows:

July 25, 1938, from Dr. Leland to Dr. T. J. Williams, Evanston, Illinois:

"DEAR DR. WILLIAMS:

The Medical Service Plan of Trinity Hospital, Little Rock, Arkansas, is one type of several prepayment plans for medical care that have been attempted. The plan was inaugurated in 1931 and is operated by a staff of six physicians. Under the plan, six weeks of hospitalization, including operating room, anesthetics, and general nursing, as well as medical and surgical services, are offered for a rate of \$2.50 a month for individuals; \$2 a month for persons enrolled in groups; and \$5 a month for families, regardless of size. Hospitalization is restricted to Trinity Hospital, and the medical treatment and surgical care are performed by the staff of Trinity Hospital only."

By Mr. Leahy:

Q. Do you recall where you got what purport to be the facts in that letter, Doctor?

A. No, I do not at this time.

Mr. Leahy (reading): "The Hospital does not appear in the American Medical Association Register, and the staff members are no longer associated with the local medical society. Solicitors are reported to be employed on a percentage basis to secure members from groups of employees in business organizations and by house-to-house canvasses.

The Trinity Hospital Plan has sold about 2,000 contracts covering about 5,000 people. Subscribers include wealthy persons in the community as well as factory employees,

and persons from towns as far as 140 miles from Little Rock. We have not been able to obtain any financial information concerning the plan other than that the premiums received from members paid 56.3 per cent of the charges for similar services rendered private patients which is approximately the same as if the members of the staff had accepted a 40 percent reduced fee schedule. Part of this reduction is said to be made up because most of the credit losses ordinarily incurred in private practice are reduced. The staff members have also been willing to participate in such a plan because additional income for special services could be secured from subscribers to the plan. Likewise, staff members do not provide free medical services for persons in the community."

By Mr. Leahy:

Q. To what do you refer, Doctor, where it says, "The staff members have also been willing to participate in such a plan because additional income for special services could be secured from subscribers to the plan"?

A. It means that the plan did not give complete medical service, but that certain items of medical care were charged for at regular rates and were not included on the regular monthly premiums stated.

Q. And those, added to the premiums stated, would make up the additional income which you speak about?

A. They increased the income to the organization.

Mr. Leahy (reading): "The objections to such an arrangement are the same as the objections to other types of contract practice which prohibit free choice of physician and rely on advertising or solicitation to secure patients. Aside from violating ethical principles which are designed to promote good medical services for the patient, such arrangements do not lower the cost of medical care. The advertised rate does not, as a general rule, provide for complete medical and hospital services and the plan is not supported solely by the dues collected from members. No insurance or prepayment plan which must add administrative costs can provide the same average services now received in private practice for lower than average charges. Either the services offered are not so complete or special charges are made for numerous services. It is also not uncommon to find that deficits are made up by the profits

from extra activities such as soda fountain, magazine, and drug sales or income from nonmembers.

There are several possible arrangements to assist persons to meet medical or hospital bills which avoid most of the objections to contract arrangements for such services. The essential feature of these plans is that the benefits are payable in cash. A number of mutual benefit associations and community health associations have been operating satisfactorily on a cash benefit basis. The July 2nd, 1938 issue of the Journal, page 59, contains the report of the reference committee on cash payments for medical services which was adopted by the House of Delegates. Under separate cover we are forwarding to you some of our publications in which the questions indicated before are discussed fully.

In reply to your inquiry regarding the Ross-Loos Clinic in Los Angeles, we are giving you some of the essential points in its operation:

The cost to the subscribers is \$2 per month per subscriber, and there are some additional charges for other members of the family. In an address by H. Clifford Loos to the women of the American Farm Bureau Federation in Chicago, December 7, 1935, he stated that 'the entire cost to the subscriber for this service, including the charges that are made for dependents, hospitalization, drugs, etc., averages \$2.68 per month. The cost of the medical group for hospitalization is 20.2 cents per subscriber per month.' The service is supposed to be an all-inclusive one covering a complete medical service, including hospitalization; there are, however, some extras and some cases excluded. The contract provides that the subscriber may choose any one of the physicians on the staff and the management of the plan claims that an effort is made to maintain a permanent family physician relation.

Statements have been made both ways as to whether the group 'contributes to the charity load in Los Angeles County in a degree proportionate to the other physicians residing in the county.' It scarcely seems probable that they do so contribute, but it would be necessary to get opinions direct from Los Angeles before any worthwhile conclusion could be drawn. If you will communicate with Dr. George D. Maner, Secretary of the Los Angeles County Medical Association, 1925 Wiltshire Boulevard, Los Angeles, California,

he will probably be able to give you more recent and more detailed information concerning the personnel and the activities of the clinic.

This information is given at your request and is confidential. Opinion is given merely as a business courtesy. No responsibility is to attach to the American Medical Association or its officers personally for information herein given.

Yours very truly,"

The Bureau has not opposed voluntary prepayment plans but has opposed plans which are made compulsory by law. The policy of the Bureau for voluntary prepayment plans has been to collect all information in order to be in a better position to assist those individuals or organizations that wish to organize plans for the benefit of low-income people. There are numerous individuals and groups, both in industry and in the community, as well as in state and county medical societies, that we have assisted, and that I have personally assisted in the development of prepayment plans. Some of those now in operation, such as the California Medical Service, adopted in 1938; the Michigan State Medical Society Plan; the New Jersey State Medical Society Plan, and several plans organized in three sections of the State of New York. We have opposed certain conditions under the contract practice of medicine when in opposition to certain of the sections of the Principles of Ethics of the AMA. As a result of a process of development over quite a number of years, ten principles have been developed, which were adopted in 1934 by the House of Delegates as a guide to county and state medical societies that undertook to organize prepayment medical plans. Principle 6 was modified in 1935 to read:

"In whatever way the cost of medical service may be distributed, it should be paid for by the patient in accordance with his income status and in a manner that is mutually satisfactory."

This amendment to Principle 6 operated to advance or assist in a better interpretation of the yardstick or measures that should be applied in the organization of prepayment arrangements, as the principle, prior to the amendment, stated payment should be made at the time the service was rendered, which is private practice. Members of the AMA

in fairly large number are conducting contract practice of medicine, probably several thousand. There are in the United States 350 medical groups, called group practice groups; only 17 of them are employing any form of prepayment medical plan, using instead fee-for-service plans.

My Bureau never took any position whatsoever concerning Group Health and has never even made an independent study of it. I realized that Dr. Woodward was making a very careful and continuous attempt to get information on it and I knew that any information that he was able to secure would be made readily available to me if at any time I needed it. The only report the Bureau has on Group Health is the article published in the Journal of October 2. Aside from the trip to Washington I have not cooperated or collaborated in any way with Dr. Woodward concerning Group Health. I had nothing to do with the preparation of his article in the Journal and didn't even know it was being written. In the correspondence received in evidence, and in other correspondence I have written, I had no idea of discouraging prepayment plans. I didn't conspire with anyone for the purpose of restraining trade in the District; for the purpose of restraining Group Health; for the purpose of restraining doctors on the staff of Group Health; for the purpose of restraining doctors not on the staff of Group Health in the District, or for the purpose of restraining the Washington hospitals in the business of operating such hospitals. I didn't discuss with anybody anything concerning the Washington hospitals and Group Health. I never approached anyone or advised anyone not to join Group Health as a member. I have never talked with any doctor on the staff of Group Health. I have never tried to do anything personally with anybody whatsoever on the medical staff or membership of Group Health, and no such idea ever entered my mind. The first time I ever saw the building in which the clinic of Group Health is located was about three days ago. I have never discussed the clinic.

Except the letters that came to me personally, I know nothing of the letters of the District Medical Society and had no information at all until I heard them read at this trial and the same as to the minutes of the meetings of the District Medical Society. I don't remember even being present with Dr. Woodward at any meeting of the District

Medical Society, aside from the meeting of the executive committee in July of 1937.

I am a Fellow of the American Public Health Association; a member of the American Statistical Association, the American Economic Association, the Royal Economic Society of London, and various medical societies. My Bureau and I are now personally engaged in the present national preparedness work conducting a census of physicians for the Committee on Medical Preparedness of the AMA.

Cross-examination.

By Mr. Lewin:

A copy of the Ireland letter (Gov. Ex. 295) was made for me and I assume it was sent to me. It is a fact that Gov. Ex. 295-A is from my files and is marked with my name. I may have read it, but I don't recall. The type of information contained in that letter falls under the jurisdiction of the Bureau of Medical Economics.

The first time I heard about Group Health was at the AMA convention about June 6, 1937 when Dr. Woodward spoke.

Q. And didn't you say that when you came down to Washington with Dr. Woodward on July 14, that the only information you had with regard to Group Health Association was what he had told you?

A. Well, I had learned in Atlantic City.

Q. From Dr. Woodward?

A. Yes.

Q. Is that right?

A. To the best of my recollection.

Q. And isn't it also a fact that before you went down to Atlantic City Dr. Conklin had sent you the confidential prospectus of the health plan for Washington?

A. Well, I received a prospectus, but I didn't connect the two in any way.

Q. Well, did you know—

A. They were named—they had different names.

Q. Well, didn't it outline a group practice plan on a prepayment basis?

A. I had no way of connecting the two, the prospectus that he sent with the H.O.L.C. or Group Health Association.

Q. Did you know of any other plan in Washington?

A. No.

Q. At that time?

A. No.

Q. Didn't his letter tell you that it was in relation to a prepayment medical service in government bureaus?

A. Well, there might be more than one.

Q. Was there more than one?

A. I didn't know.

Q. Do you mean to say you made no connection between that plan that you received from Dr. Conklin—

A. That's right.

Q. —and the plan that was under discussion at Atlantic City?

A. That's right.

Q. Didn't Dr. Conklin write you, "I am enclosing here with a plan that has recently come to our attention for development of a prepayment medical service in governmental bureaus"?

A. (The witness nodded his head.)

Q. "The potentialities of such a plan, if and when it is put in force in the Capital City, should be readily understood"?

A. Yes, sir.

Q. And didn't you read that plan?

A. I did.

Q. And when you came down here on the 14th didn't you connect that plan which you had read with the plan that you were asked to come down here and advise the District Medical Society on?

A. No, I did not.

Q. No connection between the two?

A. No, sir.

Q. You thought it related to some other plan than Group Health Association?

A. Yes, sir.

Q. What other plan did you think it related to?

A. Well, it had different names, some other—some other federal employees, but I have no way of knowing who.

Q. Wasn't it referred to as "a cooperative medical service plan"?

A. Yes.

Q. Did you ever find out that there was any other cooperative medical service plan that fitted that description except Group Health?

A. Well, I didn't feel that that description fitted Group Health, with the information that I had at that time.

Q. Did you make any later study to find out what was referred to in that prospectus?

A. No. That is the last I ever heard of that.

Q. Didn't you ever at any time connect that prospectus with Group Health Association?

A. No.

Q. Didn't you refer to that prospectus in a written report which you made to Dr. West in connection with Group Health Association?

A. I don't recall that I ever made a written report to Group Health.

Q. All right. We will come to that in a moment.

I came to Washington with Dr. Woodward to confer with the District Medical Society. I was formally authorized to come to Washington and advise the District Medical Society with regard to Group Health. I did come to Washington for that purpose and I did advise the District Medical Society. I did talk at the July 14th meeting.

Q. And didn't you know that Dr. West had suggested another cooperative plan to be set up by the District Medical Society to offset the effect of Group Health Association?

A. I knew that after I returned home.

Q. When you wrote to Conklin and explained your plan, you knew that what he wanted was the details of a plan to offset Group Health Association, didn't you?

A. I don't believe I did at that time.

Q. Oh, you said you knew it after you got home. And you wrote Conklin in August, didn't you, and told him in detail what you had proposed when you were down there advising the District Medical Society?

A. Perhaps I did.

Q. All right. Then you knew that what you were advising them was to set up a plan for the first time, a prepayment plan, in competition with Group Health Association; isn't that right?

A. No, sir.

Q. Didn't you know that Dr. West had suggested that the District Medical Society, for the first time in its history, organize a prepayment plan to offset Group Health Association?

A. That wasn't my understanding of it. I understand that it was an outgrowth of a plan that they had had in operation for some two years and wanted to go on further with it.

Q. Did you have a talk with Dr. West about that time?

A. Oh, I had lots of times. I presume so.

Q. Well, you say you found out that that was his plan when you got back to Chicago. Did you find it out from Dr. West?

A. I don't know the day; I heard Dr. West mention the fact that he had been here and made some suggestions.

Q. Yes. And didn't Dr. West tell you that his suggestion was to set up a plan in competition with Group Health?

A. He may have. I don't recall it now.

Q. Well, does this refresh your recollection, his letter to Verbrycke (Gov. Ex. 152), which is in evidence (indicating)?

The Court: Point out the part you have in mind.

Mr. Lewin: I have. I have done so.

The Witness: Yes.

By Mr. Lewin:

Q. Didn't he say this in that letter: that "If I were a member of the committee of the District Society I would want to consider the advisability of organizing a sort of co-operative movement under the auspices of the Society to offset the effect of the cooperative movement that is now being promoted by certain agencies in Washington"?

A. That's what he said in the letter.

Q. Yes. And then when you advised Conklin in August of 1937 (Gov. Ex. 260), you knew you were advising him of your pool for that purpose, didn't you?

A. That isn't the purpose I had in mind.

Q. And wasn't the suggestion that you made for a co-operative movement simply a collection agency for private practice?

A. No, not that at all.

Q. Wasn't that the effect—

A. No, sir.

Q. —of what you wrote Dr. Conklin?

A. No, sir.

Q. Didn't you suggest that there be a pool of money set up by prepayment and out of that pool of money doctors be paid on fee-for-service basis?

A. It was a cash indemnity prepayment plan.

Q. Yes. And it planned, didn't it, that the patient would receive the cash?

A. That is right.

Q. And pay the same fee for service—doctors on the same fee-for-service basis?

A. You may speak of it that way.

Q. And didn't contemplate any group practice whatever?

A. No.

Q. Isn't that right?

A. That's right.

Q. Yes. Well, now, you said, I think, on your direct examination, that when you went back to Chicago you did nothing more except to make an oral report to Dr. West?

A. That's right.

Q. You stand on that testimony?

A. There is a report that carries my name.

Q. Well, didn't you authorize it? I show you the report (Gov. Ex. 200).

A. Yes, sir.

Q. Didn't you and Dr. Woodward make a written report to Dr. West?

A. I didn't collaborate with Dr. Woodward.

Q. Do you mean to say that Dr. Woodward acted without your authority?

A. Well, he had a perfect right to.

Q. Is that your testimony? He had a perfect right to. Then, he was authorized to make this report?

A. I put my name—I authorized him to put my name on it.

Q. Oh. You read it, I suppose, did you not?

A. I think I must have, yes, sir.

Q. And weren't you responsible for this little statement, at the end, in writing to Dr. West, that "this Group Health Association is obnoxious to public policy, for obvious reasons"?

A. No, sir. That's not my language.

Q. Wasn't that your idea?

A. That's not my language.

Q. Maybe not your language. Isn't that what you wanted to stand behind as your report?

A. I would stand behind it, yes.

Q. You would stand behind it?

A. Yes, sir.

Q. And that is what you reported to Dr. West?

A. Yes, sir.

Mr. Kelleher: The reference to prospectus in there.

By Mr. Lewin:

Q. I will ask you to look at it again and see if that is not a reference to that prospectus that you said you never connected to Group Health Association.

A. Yes, sir. The first thing.

Q. Yes. Very first thing?

A. That's right.

Q. It says, this, doesn't it? "A prospectus for a plan for a cooperative medical service on a periodic payment basis for federal employees and their families in Washington was circulated sometime ago. The prospectus is not dated, and the time of its issue is not known. It was circulated anonymously." And then you describe the plan, don't you?

A. (The witness nodded his head.)

Q. And that's the plan that you think is Group Health, don't you?

Mr. Richardson: Now you mean?

Mr. Lewin: Then.

Mr. Richardson: Well, say then.

Mr. Kelleher: Oh, he understood the question.

Mr. Lewin: I'll say now and then, both.

The Witness: Well, I can't be sure that this cooperative — plan for cooperative medical service is the same prospectus that I received in the letter from Conklin.

Q. Well, do you know of any other prospectus that was headed that way?

A. No, I do not.

Q. It has the same heading, doesn't it?

A. As far as I know.

Q. And doesn't that description you give of it fit it on all fours?

A. It fits G.H.A.

Q. Doesn't it fit prospectuses that you had received from Conklin as early as June 5?

A. I don't remember the prospectus.

Q. And had read before you went to Atlantic City?

A. I don't remember the prospectus.

Q. Well, did you find it?

A. If I could see the prospectus I could tell.

Mr. Lewin: All right. You may see it. Let's give him the prospectus.

By Mr. Lewin:

Q. Here is a photostatic copy of the prospectus (Gov. Ex. 104). Is that the one you received from Conklin?

The Witness: It is still my opinion that this does not necessarily refer to Group Health Association.

By Mr. Lewin:

Q. This is the prospectus, is it not, that you referred to in your joint report with Dr. Woodward to Dr. West, dated July 16?

A. Yes, sir.

Q. It is. And you were reporting on Group Health at that time and you intended so to report?

A. We were reporting on more than Group Health.

Q. Were you reporting on a different plan than Group Health?

A. Reporting on information that we'd had up to date.

Q. Well, had you had any information at that time that there was another plan other than Group Health of that same character here?

A. Apparently from this.

Q. Well, now, you came down here on the 14th. Did you hear any discussion of another plan here?

A. We heard discussion of a plan for federal employees.

Q. And that's what you thought was Group Health, isn't it?

A. Not necessarily. There could have been two.

Q. Well, now, what is your testimony? Were there two that were discussed or was there one Group Health?

A. There was one about which there was a considerable amount of doubt as to whether it would merge into Group Health or whether it was another outgrowth.

Q. You mean to say that was at this discussion with the District of Columbia doctors.

A. At a committee meeting, so far as I can recall.

Q. There was a discussion of two plans in the District of Columbia for prepayment basis—of group practice on a prepayment basis?

A. I think I recall a discussion of a plan about which there was considerable doubt.

Q. Well, that was Group Health Association, was it not?

A. That was another plan for group—for federal employees, of a very vague nature.

Q. Well, whose plan was that?

A. This one here which we're—about which we have the prospectus.

Q. Well, did you point out in your report to West that there were two plans that you considered on your trip to Washington and that conference that you had with the District Medical Society (handing Gov. Ex. 200 to the witness)?

A. We reported to Dr. West that there was a prospectus, and we also had certificates of incorporation of Group Health.

Q. Well, what was the difference between the two?

A. A vast difference.

Q. What was the difference?

A. One was a prospectus, and the other were certificates of incorporation.

Q. Well, what was the difference in the plan, between the two?

A. Well, they are very similar as far as the—

Q. Well, what was the difference?

A. Well, I can't tell you the difference except—

Q. Well, —

A. Unless I study it over.

Q. Don't you remember any differences? You say they were two different plans?

A. Yes, sir.

I am a full time, salaried employee of the AMA. I advised the District Medical Society in July. I had not discussed the situation with Dr. Woodward on the train. I hadn't seen the charter of Group Health at that time. I saw it after I had been to Washington. At the meeting I offered a suggestion, entirely separate from Group Health, for the information of those who were considering the development of a prepayment plan for the District Medical Society.

Q. All right, after you were back in Chicago, did you tell Dr. Woodward that you would be willing to elaborate for the District Medical Society or its committee anything you had told them that was not clear?

A. I don't recall telling him anything in those words, but I might have.

Q. And did you tell Dr. Woodward around August 18, 1937, that you didn't at that time have any further plan for forestalling Group Health Association?

A. I don't recall any such conversation.

Q. Would you say you hadn't told him that?

A. No.

Q. You may have told him that?

A. My answer is the same as before.

Q. Just what?

A. That I don't recall any conversation of that kind.

Q. But you may have done so?

A. I don't recall it.

Q. Let me read you Gov. Ex. 202, which is in evidence, a letter from Dr. Woodward to Dr. Conklin, dated August 18th, 1937:

"I understand from your letter that everything that was said and done by Dr. Leland and me in the course of our recent conference with the Committee then having Group Health under consideration is now before the committee newly appointed to study the matter.

If there is anything in what either of us said or did that was obscure or calls for explanation or elaboration, I shall be glad to undertake to explain or elaborate it for the information and guidance of the committee.

Neither of us has at the present time any further proposal looking toward forestalling the growth of the Group Health Association, or towards preventing the organization of similar groups in the District of Columbia."

Did you give Dr. Woodward the information on which he could have based that letter?

A. Let me see it.

(Thereupon Court and counsel engaged in an informal conference at the bench, which was not reported.)

By Mr. Lewin:

Q. Dr. Leland, isn't it a fact that you kept in contact with the District Medical Society or its representative with

regard to Group Health during the late summer or early fall of 1937?

A. No, sir.

Q. Didn't you come down here some time in October and go to Dr. Conklin's office and have a conversation with him in regard to Group Health Association?

A. I was in Washington some 12 or 14 times during 1937 and 1938, and all but one time of which I have any recollection now, were on other matters; other association matters.

Q. Would you deny that you went to see Dr. Conklin in his office in October with regard to Group Health Association?

A. I have no recollection of seeing him about Group Health, but I presume I did go to his office because that was my custom to go to the office of the secretary of the Medical Society while I was in the city.

Q. I would ask you whether you went to see him on this subject.

A. I have no recollection.

I do not know Dr. Earl Templeton. I don't remember making any suggestion to Dr. Templeton about employing a public relations counsel.

Q. . . . Let me read this excerpt from the minutes of October 6th, 1937 (Gov. Ex. 37):

(Excerpt)

"Dr. E. R. Templeton said that Dr. Leland suggested," and this was in connection with the matter of employing a public relation counsel:

"Dr. Leland suggested that the wisest thing would be to employ a former newspaper man."

Does that refresh your recollection as to your ever having made that statement?

A. What was that?

Q. That you suggested a former newspaper man as the one to be the Society's public relations counsel?

A. As I recall it now, the question which I discussed with someone, whom I don't recall at present, was in connection with the employment of an Executive Secretary, and I did make some suggestions on that.

Q. Did you make this suggestion that Dr. Templeton said you did?

A. I don't recall the exact statement, but I did have some discussion concerning the method of going about the employment of an executive secretary for the Society.

Q. Now, Dr. Leland, you knew in the fall of 1937, didn't you, that the Medical Society of the District of Columbia believed it to be the duty of the American Medical Association to oppose Group Health Association with all its might?

A. I don't know that I would go quite that far.

Q. Didn't you hear that?

A. I heard them make some statement that they would like some assistance.

Q. And that is all you heard?

A. I wouldn't be sure, but that is all I recall at the moment.

Q. Didn't you hear them say that it was the duty of the American Medical Association to "combat" Group Health Association vigorously?

A. It is possible, but I do not recall it.

.

Q. Didn't you hear this resolution read by Dr. Hooe at that meeting on November 6th, which you attended with Doctors Hooe, McGovern, and Woodward:

"The Medical Society of the District of Columbia at its regular meeting held November 3rd, 1937, adopted the following resolution:

1. That inasmuch as the movement threatens to be nationwide in its scope, and affect every component organization of the American Medical Association, it is the duty of the American Medical Association to oppose immediately with all its might this entering and possibly illegal wedge to the socialization of medicine,

2. That in view of the tremendous import of the Group Health Association movement to the membership of the Medical Society of the District of Columbia and also to the profession at large and to the public, it is the opinion of the Medical Society of the District of Columbia that it is the duty of the American Medical Association to combat vigorously Group Health Association, Incorporated."

Didn't you hear that resolution read at that meeting?

A. November 6th?

Q. Yes.

A. I think I did, yes.

Q. And you were one of these "proper officials" of the American Medical Association that was being asked to do this?

A. I was at the meeting.

Q. Will you answer my question: Weren't you one of the proper officials as referred to in that resolution?

A. I think so.

Q. And you knew also, didn't you, that there wasn't any question of the jurisdiction of the American Medical Association to interfere with the local society in this case, was there?

A. I don't quite understand the question.

Q. Didn't you say on your direct examination that the AMA held aloof and had no jurisdiction over these local bodies, wasn't that your testimony?

A. I don't think so; it might have been.

Q. As a matter of fact, you knew at that time that the District Medical Society had expressly waived any such question and had conferred jurisdiction over this matter on the American Medical Association?

A. I didn't know that.

Q. Didn't you know that it had passed a resolution that they waived any question of regional interference on the part of the AMA?

A. I didn't know that.

Q. What is meant by "waiving regional interference"?

A. I can't give you a legal definition.

Q. I am not asking for that: What did it mean to you?

A. I don't recall ever hearing it read.

Q. All right, let me continue reading it.

"Thirdly, That the Medical Society of the District of Columbia waives any question of regional interference by the American Medical Association.

4. That the American Medical Association give a definite and immediate expression of its intended action in this matter."

Did you hear that resolution read?

A. I did.

Q. That was the resolution that you gentlemen were assembled there to discuss?

A. In part.

Q. And didn't you hear Dr. West speaking for you gentlemen, and the American Medical Association, say that in answer to that last request that the AMA had been fighting this thing; he thought it had been fighting it even before the District Medical Association got interested and it would continue to do so until it was called off?

A. I heard that.

Q. Did you object to that?

A. I said nothing.

Q. Did you intend silence to be consent?

A. There wasn't anything for me to say.

Q. You think it was decided for you. What were you there for? Wasn't it to discuss this very question?

A. Not necessarily.

Q. Did you tell Dr. Hooe and Dr. McGovern that you were not in sympathy with what had been expressed by Dr. Hooe and Dr. West as being the policy of the AMA?

A. No.

Q. Did you know at this time that the committee of the District of Columbia Medical Society had met and decided to bring proceedings against Doctors Lee and Scandiffio because they were members of the staff of Group Health?

Mr. Leahy: I object to the form of the question.

Mr. Lewin: On the ground that it is leading; this is cross-examination.

Mr. Leahy: No, because you are not bringing in the ground on which the District Medical Society did bring these disciplinary proceedings.

Mr. Lewin: If there is one thing that is clear in this case, that is.

The Court: The question then is whether he knew they were bringing disciplinary proceedings because of their connection with Group Health?

Mr. Leahy: It is not that at all; it is because of their violation of the articles of the constitution under which the local society regulated the conduct of its members. I object to the statement that it was because of something which is not in evidence and which is contrary to the fact and the evidence.

By Mr. Lewin:

Q. What is your answer?

A. The first time I heard anything about or the names of these two physicians was at this meeting.

Q. Did you hear that the committee of the District Medical Society had brought disciplinary proceedings against those two doctors because of their connection with GHA?

A. Whatever was reported at that meeting I heard.

Q. Can you answer my question?

A. I don't recall the wording.

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Q. I would like to know whether you didn't hear and realize at that time that the committee of the District Medical Society brought disciplinary proceedings against Doctors Lee and Scandiffio because of their connection with GHA.

A. I don't recall the exact language but whatever was reported by those gentlemen at that meeting I heard.

Q. Didn't you know in substance that very thing?

A. I didn't know it.

Q. Didn't you know it at the very start of that meeting?

A. No, sir.

Q. Now, I am going to read you the third paragraph of that conference and see if that doesn't refresh your recollection. The first two paragraphs deal with the resolution that I have read you. Here comes the very first business of that meeting:

"The operations of Group Health Association, Inc., began on Monday last. Two men who contacted with Group Health Association, Inc., were members of the Medical Society of the District of Columbia, and the third had sent in his application which had been withdrawn in the past ten days. There is nothing to be done about this third member at the present time. The resignations of the other two were received by the Medical Society of the District of Columbia within the week. A letter was sent to each of them asking him to appear before the Compensation Contract and Industrial Medicine Committee. They didn't appear but the committee received a communication from one of them.

The Committee unanimously recommended to the executive committee of the Medical Society of the District of Columbia that disciplinary measures be taken."

Did you hear that?

A. My answer is as was stated previously. That is the first I heard anything of that instance.

Q. You did hear it then?

A. Yes.

Q. Did you object to it then?

A. No, sir.

Q. Didn't that strike a responsive chord in your mind with regard to your own attitude as to such doctors?

A. I don't understand.

Q. Didn't you believe that that statement was a wise course to pursue on the part of the District Medical Society?

A. The jurisdiction lies entirely with the District Medical Society and if they believed they had charges to prefer against any physician because of the violation of some of their regulations that was the proper thing to do.

Q. You knew that they were there seeking your advice for their guidance?

A. Yes.

Q. And you knew this was the first business they took up with you?

A. Yes

Q. Didn't you regard similar proceedings against doctors similarly situated as a wise course to pursue, and hadn't you similarly instructed a local medical society to pursue the same course in that case?

A. Not that I recall.

Q. Hadn't you been told by the local society in Cincinnati that a Dr. Cook who had been with the Ross-Loos Clinic had come back to Cincinnati and wanted to start up a similar clinic in Cincinnati?

A. I had had information to that effect, yes, sir.

Q. Yes. And didn't that local society write you and ask you for information about the Ross-Loos Clinic and any experience which would guide them in handling this matter?

A. They asked me for information.

Q. Well, was my statement correct (handing a photostat to the witness)?

A. Yes, sir.

Q. And didn't you respond to that letter?

A. I did.

Q. And didn't you tell them two things about the Ross-Loos Clinic: one, that it was your understanding that the Ross-Loos medical group is composed of a number of very competent physicians; and, as far as you know, the quality of medical care seems to be good?

A. Yes, sir.

Q. And secondly this: it is your understanding that each member of the group concerned was required to pay a certain amount per week, prepayment plan, and you were informed that the Los Angeles County Medical Association—which, by the way, is one of your component societies, is it not?

A. Yes, sir.

Q. —objected to the operation of this plan by the Ross-Loos group, and that charges were finally preferred against Doctors Ross and Loos. You told them that, didn't you?

A. Yes, sir.

Q. And you told them that those charges were substantiated by the council of the Los Angeles Medical Association, did you not?

A. Yes, sir.

Q. And you told them that on appeal the California Medical Association upheld the action of the Los Angeles Medical Association whereby Doctors Ross and Loos were expelled from membership?

A. Yes, sir.

Q. And you told them that that had been appealed to the AMA, did you not?

A. Yes, sir.

Q. And you told them that the AMA had made a decision which expressed no opinion as to the guilt or innocence of the appellants in connection with any unethical practices alleged and charged against them?

A. Yes, sir.

Q. Did you intend to leave the impression with this jury yesterday, with regard to that appeal, that the American Medical Association on appeal had exonerated Ross and Loos?

A. I intended to leave the impression that the Judicial Council of the American Medical Association had reversed the actions in so far as procedure was concerned.

Q. Yes. Did you intend to leave the impression that they had exonerated Ross and Loos?

A. They had no—the question of ethics did not enter into the action of the Judicial Council.

Q. Yes. It was purely a procedural question. And isn't it true that they expressed no opinion as to the guilt or innocence of those appellants?

A. That is right.

Q. And didn't you say so in this letter?

A. I did.

Q. All right. Now, they were the two bits of information that you supplied, are they not: first, that the Ross-Loos Clinic was giving, as far as you know, competent care of competent physicians; and, secondly, that these two men had been expelled from your local societies in California?

A. That is right.

Q. And you gave that to them as information for guidance of the Cincinnati society, did you not?

A. I gave them information that they requested.

Q. Yes. You were responding to his request for information to guide them, weren't you, in handling their matter?

A. That's right.

Q. All right.

A. That's right.

Q. Now then, weren't you informed that after they got your information they had a meeting in Cincinnati, and they decided that any member—no; they first decided that anybody who ran a clinic like the Ross-Loos Clinic would be guilty of unethical practice and violating your Society medical ethics? Didn't you hear that?

A. I didn't hear it.

Q. Weren't you told that—

A. No.

Q. In the letter?

A. Yes, sir. I read it.

Q. All right. And weren't you also told that they had passed a resolution that in that event nobody could join their society who had any connection with that kind of an organization?

A. They had taken a vote on it, yes, sir.

Q. You were told that, weren't you?

A. Yes, sir.

Q. And you were told also that they had taken a vote on it and passed it, that no member of their society who had anything to do with that kind of an organization could remain a member of their society?

A. That's right.

Q. Now, Dr. Leland, one more question with regard to the Cook situation: Isn't it true that when you got that information as to what the local society did in that case, you wrote back to them and said that you regarded that as wise proceedings, or words to that effect?

A. Exactly.

Q. Now, didn't you feel the same way when you heard Dr. Hooe tell you that on somewhat similar grounds similar proceedings were being brought against Doctors Lee and Scandiffio?

A. I think the two were quite different. The one in Cincinnati was an expression of my satisfaction over the fact that the Cincinnati Academy of Medicine had investigated the situation itself and had voted upon the issues and had settled them within its own jurisdiction.

Q. Do you mean by that to say that your only interest in that thing was as to a matter of form and not as to a matter of substance?

A. I had interest in the substance, but the reference I made in my letter was to the matter of procedure, as I said. Had proceeded wisely.

Q. But you did feel the same satisfaction with regard to the substance that had been achieved, didn't you?

A. The substance hadn't entered my—wasn't expressed in the letter at all, as far as I recall.

Q. Although you had been asked for information and experience to guide them in what they were doing?

A. Well, that was prior to the Society's action.

Q. All right, sir. Now, you learned also at that meeting, did you not, that there had been an attempt on the part of the local Society to influence the local hospitals against Group Health Association?

A. I learned it the first time then.

Q. Yes. And it was discussed rather fully there, wasn't it?

A. I think so.

Q. Yes. And again did you express any disapproval of that course?

A. I expressed no—made no expressions of any kind during the meeting.

Q. Even though you knew those men were there to get your advice about the subject matters that they brought on?

A. That's what they came for.

Q. And did you hear any criticism of it from your colleagues, Dr. West and Dr. Woodward?

A. I did.

Q. And wasn't that criticism that they didn't know whether such a policy could be effected? Wasn't that Dr. West's criticism, in substance?

A. I think he made more criticism than that.

Q. Yes?

A. As I recall it, he questioned whether it was a wise thing to do.

Q. Now you have an independent recollection now of what transpired at that conference?

A. Oh, I have heard that read. I have read it several times since the trial began.

Q. All right. You look at that. You look at this and see if this doesn't refresh your recollection (indicating Gov. Ex. 117). Do you have any other information except what is contained here?

A. None that I recall independently.

Q. All right. And isn't this what happened: (reading)

"Dr. Hooe: In the matter of the HOLC what is your future program?

Dr. West: It is just exactly the same as it has been all the time. We shall continue fighting it every way we can. We are going to get all the help we can get. We are at least going to keep on until we are instructed otherwise.

Dr. Hooe: The executive committee recommended that a letter be addressed to the medical boards of the various affiliated hospitals in Washington calling attention to the HOLC health group, insisting that the hospitals take cognizance of it and, among other things, calling attention to the fact that the physicians employed by such groups are not acceptable to the Medical Society of the District of Columbia.

In reply to Dr. McGovern's question as to how far the Medical Society of the District of Columbia might go in controlling the hospitals, Dr. West expressed some doubt that the Society can effect such control."

Did you get anything more from Dr. West in response to that question?

A. I think there is more—

Q. Is there?

A. —later on.

Q. Will you find it for me?

A. Right there (indicating).

Q. Where? You are pointing to what Dr. Woodward said, or Dr. West? Oh, yes.

(Reading:)

"Dr. Hooe: Is it not in your opinion most reasonable that the hospitals should acquiesce in this matter?"

And Dr. West said, "It is reasonable that they should do it, but as to whether or not they will, that's another question. Suppose they don't?"

Is that all Dr. West said?

A. I don't recall any more that he said on that subject.

Q. Now, did you hear Dr. Hooe say this at the end of that colloquy:

"At a meeting of the group of the Medical Society of the District of Columbia last Sunday night"—

Last Sunday would be October 31st, wouldn't it? This was November 6th.

A. Yes, sir.

Q. —"it was brought out that all the civilian hospitals in Washington except probably one had fallen right into line, which was very gratifying."

Now, when Dr. Hooe said that, didn't that mean to you that at least eleven private hospitals here in Washington had taken steps in line with the District Medical Society in opposition to Group Health Association?

The defendants objected on the ground that it was immaterial, irrelevant and incompetent and argumentative. Objection overruled and exception allowed.

Q. What is your answer?

A. My conclusion on that would be that they had seen fit to arrange their affairs in accordance with the resolutions and suggestions of the Medical Society. Whether they did that in connection with GHA I wouldn't know.

Q. Well, is that quite true, Doctor? Is that fair? Was there anything else that was being discussed with regard

to the hospitals except Group Health Association (handing a photostat to the witness)?

A. That was certainly one issue, but there may have been other issues.

Q. There may have been. Was there any other issue?

A. I don't know.

Q. You don't know of any other?

A. From this record, do you mean (indicating)?

Q. No. From this record or from any independent recollection which you may have. Was there any other issue there being discussed with regard to the hospitals except to keep Group Health doctors out of them?

A. Well, the wording of this report doesn't indicate whether the matter was solely in connection with Group Health Association or not.

Q. Well, now, Dr. Leland, does it indicate that there was any other subject matter except Group Health Association and the hospitals that was the subject of that colloquy?

A. I don't know whether there was or not.

.

Q. All right. Now, Dr. Leland, did you attend the meeting of the secretaries of the local societies held in Chicago, November 18 and 19, 1937, I believe?

A. Yes, sir.

Q. You did?

A. I think so, as well as I can recall now.

Q. And you knew that Group Health Association was to be a subject matter discussed there, didn't you?

A. I didn't know it in advance.

Q. Didn't you? Didn't Dr. West say that it was going to be, at this meeting of November 6th?

A. Oh, yes. I recall now.

Q. Didn't Dr. West say, "In thirteen days there will be a conference of secretaries and editors of the constituent state Medical associations, at which many other officers of constituent state and some component county societies will be present. The whole story of the H. O. L. C. movement will be brought before the conference, and the point of view of the members of the conference can be obtained and presented better than by spending money in writing material. The members of the conference will be given the entire picture, and Dr. Conklin and Dr. Yater, members

of the conference, will be given full opportunity to say anything they want to say?"

A. That is correct.

Q. And didn't you know that Dr. West was specifically authorized by resolution of the board of trustees to explain the whole matter of the activities of Group Health Association before the conference of secretaries of constituent state medical associations and editors of state medical journals on Friday?

A. He was.

Q. He was. And didn't he actually appear with you before that meeting?

A. I don't quite understand what you mean?

Q. Didn't he go to the meeting with you? Wasn't he there, too?

A. Well, I don't know that he went with me.

Q. Oh, well.

A. He was at the meeting.

Q. That is right. He was at the meeting.

A. Yes, sir.

Q. And didn't he discuss Group Health Association and the AMA's attitude toward it before them?

A. As I recall it he did.

Q. And weren't Doctors Conklin and Yater, defendants in this case, representing the District Medical Society there?

A. I believe so.

Q. Did they participate in that discussion with regard to Group Health?

A. As nearly as I can recall, they did.

Q. Did you do it, too?

A. I don't recall that I made any discussion.

Q. Yes. Was Dr. Holman Taylor, this gentleman you say was secretary of the State Medical Society of Texas, there?

Mr. Leahy: I object. It is immaterial, collateral.

The Court: He may answer that question.

The Witness: I presume he was there. He was a very regular attendant at those meetings.

Q. And weren't you informed shortly after that that Dr. Conklin had brought Dr. Selders' connection with Group Health to the attention of the societies in Texas?

A. I have no recollection of anything of the sort.

Q. Well, didn't you get a copy of Dr. Taylor's letter to the Board of Censors of the Harris County Medical Society (handing a photostat to the witness)?

A. Well, if I did I paid very little attention to it.

Q. Well, did you get it?

A. The stamp of the Bureau of Medical Economics is on it.

Q. Your name is on it at the top, isn't it?

A. That's not my handwriting.

Q. Well, would you say you got it or, didn't get it?

A. I did get it.

Redirect examination:

I was asked on cross-examination whether I gave advice to District Medical Society with reference to public relations counsel and I said the advice which I gave was with reference to an executive secretary. I don't remember anything being said in addition to what is contained in the transcript of the Chicago meeting of November 6 (Gov. Ex. 117). I have no independent recollection of Dr. Woodward suggesting anything at that conference other than that the local society have competent counsel to advise it as its primary move is clearly to see whether the local District Attorney, Corporation Counsel, Board of Licensure or the Insurance Commissioner, will act on the facts.

Recross-examination:

Q. Did not Dr. Hooe ask what they could say to their colleagues back home, the District Medical Society?

A. I don't remember whether he did or not.

Q. Did he say (reading Gov. Ex. 117): "Can we say that we have the backing of the American Medical Association in that?"

A. Yes, sir.

Q. And did Dr. West say: "You can say so very definitely, as that is absolutely in keeping with the policies of the organized medical profession of this country"?

A. That was said.

Q. Did Dr. West say this in response to Dr. McGovern: "Dr. McGovern. There is immediate sentiment of the Medical Society of the District of Columbia to formulate some plan." Was he not discussing some cooperative prepayment plan there?

Mr. Leahy: I object. The paper speaks for itself.
The Court: I think that is true.

By Mr. Lewin:

Q. Did not Dr. West say this: "I do not know whether or not you remember that I suggested, when in Washington some time ago, that you give the idea some consideration, but after thinking about it later I decided that probably I should not have offered that suggestion, because you already formulated a plan and I am not convinced that that plan did not have something to do with the stimulating of this HOLC movement. A plan almost inevitably tends to create a sentiment for the formation of other similar plans."

A. He said that.

Q. Did he not also say this—

The Court: Are you asking him what the paper says?

Mr. Lewin: I thought you asked me to do that.

The Court: Point it out to the jury yourself. Let us not take up so much time. That is what I suggested.

Mr. Lewin: I did not know what procedure your Honor wanted me to follow.

The Court: I thought if there was anything there that was contrary to what opposing counsel said about it, you might point it out.

Mr. Lewin (reading): "Dr. Hooe. In the matter of HOLC, what is your future program?"

Dr. West: It is just exactly the same that it has been all the time. We shall continue fighting it in every way we can. We are going to get all the help we can get. We are at least going to keep on until we are instructed otherwise."

And then, after Dr. Hooe had outlined the situation, Dr. West said (reading further):

"Dr. Hooe has not made one statement of any kind that the American Medical Association has not fully considered and acted on where possible."

Thereupon the defendants stated to the Court that they desired to prove that Group Health was the recipient of subsidies during the period involved in the controversy, from the Twentieth Century Fund and associates of the Twentieth Century Fund, and bearing on the question of the approval or disapproval of Group Health by the local

Medical Society, and as showing the income and charges of Group Health and that its operations violated the principles of medical ethics; defendants' rules and regulation and Constitution and By-Laws, and disrupted fair competition in the community among the doctors; also as bearing on the question whether Group Health could furnish the kind of medical service that it promised on dues received from members, and further as bearing on the question whether Group Health was in fact a spontaneous plan of HOLC employees, by showing that Group Health rather was a social experiment carefully planned by the executives of HOLC in collaboration with the Twentieth Century Fund and funds associated with it, or set up and financed by it for carrying out social schemes of doubtful legality for providing medical service on what was closely akin, if not in fact, an insurance basis; and proposed to show the background of Group Health and the Twentieth Century Fund, and associated organizations; and that the Twentieth Century Fund gave \$6,000 to Health Economics Association, Inc., in 1936, to be used in connection with Group Health, and in January-February, 1937, gave Group Health \$22,000 for use during the next year; that a large portion of that money was used to set up GHA; beginning in August, 1938, \$500 a month was paid by the Good Will Fund to Perry Taylor, administrator of Group Health, and that continued up until the time of the indictment, and that in the spring of 1938 Group Health borrowed \$5,000 from the Good Will Fund or Twentieth Century Fund; that on these various questions factual issues had been presented by the testimony of Government witnesses, notably Penniman, who made the statement that Group Health was operated successfully on dues, with the one exception of the purchase of equipment, which was made under a \$40,000 grant from the HOLC, and that there were no contributions from any other organization; that he didn't know what grants were made by Good Will Fund, or who paid the salary of the administrator, Perry Taylor, from August, 1938.

Defendants then offered in evidence excerpts from the following exhibits, which had been marked and identified by the witness Percy Brown as pertaining to Group Health:

DEFENDANTS' EXHIBIT No. 31

"Twentieth Century Fund, Inc.

Report on Examination of Accounts

March 1, 1936, to February 28, 1937

Detail of Disbursements—Fund Projects

March 1, 1936, to February 28, 1937

Medical
Economics
Department
\$6,010.67"

Health Economics Association

DEFENDANTS' EXHIBIT No. 32

"Twentieth Century Fund, Inc.

Report on Examination of Accounts

March 1, 1937, to February 28, 1938

Contributions to Outside Organizations

March 1, 1937 to February 28, 1938

	Appropriated	Disbursed	Surplus Unexpended
Health Economics Association, Inc....	\$16,642.14	\$16,642.14"

DEFENDANTS' EXHIBIT No. 33

"Good Will Fund, Inc.

Report of Examination of Accounts

December 29, 1936 to December 31, 1938

Notes Receivable—\$18,000.00

These notes were examined at the office of the Fund, and were as follows:

Dated	Name	Due	Amount
Sept. 16, 1938	Group Health Association, Inc.	March 16, 1939	\$5,000.00

Appropriations and Grants

December 29, 1936 to December 31, 1938

	Appropriated	Disbursed	Surplus Unexpended
Preventive Group Medicine.....	\$8,000.00	\$2,577.47	\$5,422.53

DEFENDANTS' EXHIBIT No. 34

"Good Will Fund, Inc.

Report on Examination of Accounts

January 1, 1939 to December 31, 1939

Appropriations and Grants

January 1, 1939 to December 31, 1939

	Unexpended Jan. 1, '39	Disbursed	Credited to Appropriations
Research Assistant—Group Health Perry Taylor	\$5,422.52	\$3,621.30	\$1,801.23

DEFENDANTS' EXHIBIT No. 36

"Joint Committee, Twentieth Century Fund and Good Will
Fund Financial Report

Period, November 9, 1938 thru December 31, 1939

	Total Budgeted or Expended Allotted to 12-31-39	Unexpended Balance, 12-31-39
Grants Showing Balances to be Paid:		
Research Asst. Group Health	\$6,500.00	\$3,972.51
Reserve-Loan to Group Health	2,500.00	2,500.00

DEFENDANTS' EXHIBIT No. 37

The Joint Committee Twentieth Century Fund and Good
Will Fund Financial Report

Twelve Months ended December 31, 1940

	Total Budgeted or Expended Allotted to 12-31-40	Unexpended Balance
Items of Expense		
Grants (showing Balances as of 1-1-40 or voted subsequently):		
Research Asst. Group Hlth.—Taylor:		
Balance 1/1/40	3,972.51	
Grant to 8/1/41	7,500.00	\$11,472.51
Group Health Assn.—Expense		
Scandiffio and Sibbett	350.00	\$6,654.98
		\$4,817.53
		21.71*

* Less: Unexpended balance closed out

120.47

DEFENDANTS' EXHIBIT No. 38

"The Twentieth Century Fund

Annual Report, 1938

(March 1, 1938 to February 28, 1939)

"Background and Aims

"The Twentieth Century Fund was founded in 1919 by the late Edward A. Filene from whose gifts the Fund's activities have since been sustained. During the first years of its existence the Fund acted solely as a disbursing agency, making annual grants to outside organizations. In the years following 1929, however, the Trustees began to experiment with surveys, conducted by the Fund itself, on economic problems of crucial current importance. An increasing proportion of the Fund's income was devoted each year to the conduct of these surveys. Finally, during the fiscal year 1937-1938, the Trustees voted to cease making grants to outside agencies and to use the Fund's entire income thereafter in its own direct activities. This action changed the Fund's status from that of a foundation making grants to outside agencies to that of an institute devoted to economic research."

"The Twentieth Century Fund

"Annual Report, 1938"

"I. Changes of the Year

" . . . During the year an agreement was reached between The Twentieth Century Fund and the Good Will Fund that a sum of \$75,000 left by Mr. Filene be administered as a separate account, primarily for medical economics, by two Trustees each from each Fund—Messrs. Dennison and Fahy for the Twentieth Century Fund and Messrs. David K. Niles and Robert Szold for the Good Will Fund. This Joint Committee assumed control of the fund on October 31, 1938. Percy S. Brown, Director of the Good Will Fund, has acted as the Joint Committee's Executive Officer and Evans Clark, Executive Director of the Twentieth Century Fund has collaborated with him and the Committee.

"The period covered by this report is the Fund's fiscal year: March 1, 1938 through February 28, 1939."

"Table 1

"Capital Assets

"February 28, 1939

	<u>Original Cost</u>	<u>Market Value</u>
"Cash	—	\$ 101.65
"Bonds, Preferred Stock, Common Stocks	\$447,814.85	459,835.68

"2. Receipts

"A total of \$179,390.36 was received by the Fund during the fiscal year 1938-1939. Of this \$21,091.85, or 11.8 per cent, came from income on the Fund's endowment; \$150,000.00, or 83.6 per cent, from dividends on the Filene Company common stock; and \$8,298.51, or 4.6 per cent, from sales of the Fund's publications."

In this connection defendants offered further to prove that the Corporation owned 150,000 shares of common stock of William Filene's Sons Company *with* approximately \$20 per share.

Defendants' Exhibit No. 39

"The Twentieth Century Fund

"Annual Report, 1937

"The Twentieth Century Fund was founded in 1919 and endowed by the late Edward A. Filene. During the first years of its existence the Fund acted solely as a disbursing agency, making annual grants to outside organizations. In the years following 1929, however, the Trustees began to experiment with studies, undertaken by the Fund itself, of social and economic questions of crucial current importance. An increasing proportion of the Fund's income has been devoted each year to the conduct of these studies, until finally, during the fiscal year 1937-1938, the Trustees took a step which will change the Fund's status from that of a foundation to that of an institute devoted to economic research and the formulation of economic policies.

"At the Annual Meeting of the Board in June 1937 it was voted to cease making grants to outside agencies after

the fiscal year 1937-1938, and use the Fund's entire income thereafter in its own direct activities. Final grants were made during the year to those organizations which had received aid from the Fund in previous years, except for the Credit Union National Association to which the Fund had been obligated some years ago to make a final contribution in the year 1939-1940."

"Table 1

"Fund Beneficiaries

1937-1938

	Amounts of Donations	Percentage of Total Donations to Outside Agencies	Percent- age of Total Dis- bursements
Health Economics Ass'n.	\$16,642.14	39.0	10.6"

"c. Group Medical Department

"With the special \$5,000 appropriation from the Twentieth Century Fund the National Association employed in February 1938 Mr. James A. Dacus, until that time an outstanding man in the Federal Credit Union Section, to promote cooperative group medical service agencies among credit unions. After studying various group medical plans by personal contact (particularly the Standard Oil unit at Baton Rouge) he was sent at once to Greenbelt, Maryland, where he has since organized a medical unit. It is hoped that Mr. Dacus will develop a technique for group medical service plan organization capable of broad application through the credit union movement."

"3. Health Economics Association

"The Health Economics Association was organized in 1936 to take over the work of promoting cooperative group medical service agencies which had been previously carried on by the Fund itself. The decision of the Board of Trustees of June 1937 to cease making grants to outside agencies after the fiscal year 1937-1938, however, meant the

cessation of the Fund's support of the Health Economics Association. A final grant was made to the Association for the year under review to complete the obligations which it had already undertaken.

"During the first three months of the year—before the Board's decision was made—the Association had conducted its usual promotional and advisory activities. After the decision of the Trustees, the efforts of the staff of the Association were concentrated on finishing certain projects it had on hand and terminating its active operations. Employment of staff members was discontinued, after allowing for reasonable notice.

"The most important project assisted by the Association in 1937 was the organization set up by the employees of the Federal Home Loan Bank Board to furnish, on a periodic payment basis, practically complete medical services for themselves and families. These employees formed the Group Health Association, Inc., a non-profit organization, chartered by the District of Columbia specifically for this purpose.

"This group started to furnish service on November 1, 1937, to approximately one thousand employees and their families. It now has a list of twenty-seven hundred subscribers, who, with their families, represent a membership of approximately ten thousand individuals. The Group Health Association has an income which amply meets its expenses in furnishing this service. This group has been subjected to severe attacks from the local medical association, as well as from certain District officials.

"At the time of the Fund's decision to withdraw from the field of medical economics, the Health Economics Association had started to furnish information and recommendations relating to a suitable group payment-group practice medical service plan for employees of New York City's Department of Sanitation. Employment conditions in the Department were investigated and a report with recommendations was completed and furnished to several of the officials of the City who were interested in the plan.

"Among the projects which were commenced, but which were not completed, during the year was a study of the legal status of group payment-group practice medical service in each of the several states. This was undertaken by the Legislative Drafting Bureau Fund of Columbia University at the request of the Health Economics Association

and was financed by the Association. A description pamphlet on the medical service plan of the employees of the Standard Oil Company of Louisiana was also being prepared.

"The present status of the Health Economic Association is largely one of marking time. This is being done, however, in a way which would enable it to expand its activities if financial support can be obtained from sources other than the Twentieth Century Fund."

• • • • • • •
 "Table 3
 "Receipts
 "1937-1938

"Cash on hand—March 1, 1937 \$54,383.81"

• • • • • • •
 " * Includes a special fund of \$17,050 given in 1933 by Mr. Filene for credit union promotion but not drawn upon. (This was subsequently paid to the Good Will Fund by order of Mr. Filene.)"

• • • • • • •
 "Table 4
 "Appropriations and Disbursements
 "1937-1938

"Fund Projects	Appropriated	Disbursed	Surplus Unexpended
"Beneficiaries:			
"Health Economics Association	\$16,642.14	\$16,642.14
"Paid to Good Will Fund (Credit Union Special Fund)		17,050.00"	

"DEFENDANTS' EXHIBIT 40

"The Twentieth Century Fund

"Annual Report, 1936

"During the first decade of its existence—from 1919 to 1929—the Twentieth Century Fund acted solely as a dis-

bursing agency, making annual grants to outside organizations. . . . While continuing to give financial support to a limited number of outside agencies, the Trustees instituted an expanding program of activities, carried on directly by the Fund itself. This program has now included studies of consumer credit, the organization of medical services, the security markets, the internal indebtedness of the United States, labor and its relation to government, taxation, wastes in distribution, large corporations and their effect on American economic life, and old-age security." . . .

"I. Fund Activities

" . . . 1. The promotion of voluntary group payment medical service organizations; . . ."

"1. Medical Economics

"The Funds' activities in the field of medical economics were conducted by the Medical Economics Department from the beginning of the fiscal year to November 30, 1936. As in the previous year, these were under the immediate direction of Mr. R. V. Rickcord, who had begun his full-time connection with the Fund on November 1, 1935.

"The Fund's medical economics activities were transferred, on December 1, 1936, to a new, independent agency, organized as a non-profit membership corporation, and called the Health Economics Association. Mr. Rickcord was elected Executive Vice-President of the new Association. The government of the Association was placed in the hands of the following Board of Trustees:

- "Prentiss L. Coonley, President,
- "R. V. Rickcord, Executive Vice-President,
- "Evans Clark, Treasurer,
- "J. Frederick Dewhurst, Secretary,
- "Walter Biddle Saul,
- "M. D. Vincent.

"As a result of the activities of the Fund, and of the Health Economics Association, substantial progress has been made in the promotion of voluntary cooperative, group payment medical service organizations. At the end of the fiscal year twelve agencies of this kind had actually been

organized, consisting mostly of small groups. A total of nine other organizations were definitely committed to such plans, of which one is actively engaged in establishing a plan and the others are in various stages of negotiations with organization officials and employees. Chief among these groups is the employees in the District of Columbia of the Home Owners Loan Corporation. Some seventeen other organizations have approved a group payment plan, but have not begun to put it into operation.

"In the prosecution of these promotional activities Mr. Rickcord and his associates discovered that the insurance and corporation laws of several states made it illegal or impracticable to set up genuine cooperative group payment agencies—except on a very limited scale. It became evident that a thorough knowledge of the legal situation was an essential prerequisite to effective action by those interested in group payment in every state. The Columbia University Legislative Drafting Bureau was retained by the Association to make a thorough study of the laws and judicial decisions of each state bearing upon this subject. This study will be completed before the end of 1937 and the sections on each state will be made available to interested groups as they are finished. The Association itself, however, will take no part in efforts to remove these legal barriers."

"II. Activities of Beneficiaries

"Seven outside agencies were beneficiaries of grants made by the Fund during the fiscal year 1936-7. The name of each with the amount of each grant and its percentage of the total donations to outside organizations, and its percentage of the total disbursements of the Fund, is given in the following table:

"Table 1.

"Fund Beneficiaries, 1936-7

	Amount of Donations.	Percentage of Total Donations to outside Agencies	Percentage of Total Disbursements
"Heath Economics Association	\$6,010.67	14.0	3.7"

"2. Health Economics Association (\$6,010.67)

"The organization of the Health Economics Association, Inc., was authorized by the Board of Trustees at the meeting which was held on June 4, 1936. The Association on December 1, 1936, took over the Fund's activities in the field of medical economics. The work of the Association has been described, with that of the Medical Economics Department, on pages 10-12."

"3. Appropriations and Disbursements

"The last annual meeting of the Board of Trustees was held on June 4, 1936. Under authority of the resolutions of the Board passed at this meeting, and subsequent action by the Executive Committee, appropriations were made during the fiscal year 1936-7 which totaled \$184,513.34. The amount disbursed from these appropriations was \$161,106.28, leaving an unexpended operating surplus of \$23,407.06. . . ."

"Table 4
Appropriations and Disbursements
1936-1937

	Appropriated	Disbursed
"Medical Economics (Including Health Economics Ass'n.)	\$30,000.00	\$30,000.00"

"Table 5
"Analysis of Disbursements
1936-1937

"Organization of Project	Amount	Per cent of Total	Field of Activity	Type of Activity
"Medical Economics . . .	\$30,000.00	26.9	Economics	Social Action"

"IV. Fund Office Organization

"1. Officers and Staff Personnel.

"The business of the Fund during the fiscal year 1936-7 was carried on in the same offices which were occupied dur-

ing the previous year at 330 West 42nd Street, New York City.

"The members of the staff during the fiscal year 1936-7 were as follows:

Table 9
"Staff Personnel

"Regular Staff:

"Director for Medical Economics R. V. Rickcord
(To December 1, 1936)

"Field Workers for Medical Economics Charles A. McKeand
(To December 1, 1936)

John H. Quill
(To December 1, 1936)

DEFENDANTS' EXHIBIT 41

"Twentieth Century Fund, Inc.

"Annual Report, 1935

"I. Fund Activities

"In addition to these activities considerable progress was made along the lines of the Fund's program in the field of medical economics, and a third report on American foundations was compiled and made public.

"A brief summary of each of the projects carried on by the Fund during the fiscal year follows:

I. Department of Medical Economics

"The largest proposition of the Fund's resources was disbursed in the furtherance of the work of this Department. The chief activities of the staff, directed by Dr. Nathan Sinai during the previous year and up to October 1, 1935, were centered on giving advice and counsel to private and public agencies interested in the organization of group-payment plans for medical services.

"After a careful study of the activities of the Department during the first two years of its existence, however, the Trustees came to the conclusion that its main objective should be actively to promote the organization of group-

payment agencies—i.e., organizations through which groups of people might obtain all-around medical and hospital care in return for small, fixed periodic payments. The Trustees, therefore, at the Annual Meeting of May 1935 approved a program directed toward this end. Mr. R. V. Rickcord was added to the Fund Staff in August to promote such group-payment experiments. In October he was appointed Director of Medical Economics when Dr. Sinai resigned his position to return to the University of Michigan as Professor of Public Health. Dr. Sinai, however, agreed that when needed he would act as consultant to the Fund in advising it and interested groups on the details of setting up group-payment plans.

"During the remainder of the period under review Mr. Rickcord and his assistants have carried on an aggressive campaign to start groups in several localities. The Department has attempted to interest such national organizations as the Chamber of Commerce of the United States, the American Federation of Labor, the National Manufacturers' Association and local Chambers of Commerce in this program. An intensive drive has been made in the city of Philadelphia to start groups, both through the initiative of employers and of labor unions. As a result of this work one of the largest unions in Philadelphia is engaged in organizing a plan, and five large companies there and in other localities are doing likewise.

"The year's experience indicates that group-payment agencies meet a wide and imperative need, and that they can be organized in all parts of the country in direct proportion to the amount of funds and personnel available. As in the case of the credit union movement, however, one of the first requirements is legislation in the several states which will authorize, and provide for the regulation of, group-payment plans in the interest of the general public.

"Table 7
"Analysis of Disbursements
1935-1936

"Organization of Project	Amount	% of Total	Field of Activity	Type of Activity
"Medical Economics	\$28,001.21	19.1	Economics	Research and Education"

"IV. Fund Office Organization

"The business of the Fund during the fiscal year 1935-6 was carried on, as in the latter part of the previous year, at 330 West 42nd Street, New York City.

"The members of the staff during the fiscal year 1935-6 were as follows:

"Regular Staff: . . .

"Director for Medical Economics Nathan Sinai
(To October 1, 1935)

R. V. Rickcord
(From November 1, 1935)

"Assistant for Medical Economics Miriam Steep
(To September 1, 1935)

R. V. Rickcord
(August 1, 1935 to November 1, 1935)

"Field Workers for Medical Economics John H. Quill
(From September 18, 1935)

Charles A. McKeand
(From November 20, 1935)"

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"V. Fund Publications

"1930. 2. A Cure for Doctors' Bills, by Evans Clark, Director of the Twentieth Century Fund. 11 pages. (Out of print)

"Reprint of an article that appeared in the Atlantic Monthly of October, 1930, suggesting the advantages of guilds of doctors offering complete medical service and periodic health examinations at a fixed annual fee. . . .

"15. How to Budget Health, by Evans Clark. Published by Harper and Brothers and now to be had from the Twentieth Century Fund only. Cloth. 328 pages. \$4.00.

"A study, written with the advice and counsel of eminent physicians and laymen, which offers a concrete plan by which medical costs can be budgeted every year in advance through groups of family doctors and associated specialists, with hospital facilities, offering complete medical and hospital care on the basis of small, fixed, periodic payments."

The Government objected to this offer on the ground that all of these matters were incompetent, irrelevant, and im-

material, and merely operated to becloud the fundamental issues in the case.

The Court: My statement is that I have reached my conclusion and do not consider the evidence admissible; therefore, I sustain the Government's objection to that line of evidence. I might briefly state my reasons, which are two-fold.

First, I do not regard the financial and economic affairs of GHA as material to the issues of the case; secondly, as to its bearing upon the question of the Medical Society's approving GHA there is nothing to show that at the time of any action by the Medical Society, or any of its committee or representatives, they knew of any subsidy or financial assistance being given by these organizations. Hence, it could not in any wise enter into their considerations.

So far as the evidence now shows, there is nothing to indicate that the defendants knew anything of these alleged subsidies up until the time that the evidence was produced here.

Mr. Richardson: I feel I should say part of our offer is to prove knowledge.

The Court: Where would it go back to?

Mr. Richardson: In the first place, the evidence in the record as it stands now is replete with statements from the very start that this thing was financed by the Twentieth Century Fund.

The Court: The evidence shows that there was no financial assistance given to them until August, 1938.

Mr. Lewin: That is right.

The Court: How do you reconcile that? You don't claim that they gave them any financial assistance, do you—any of these organizations?

Mr. Richardson: Oh, yes, because we have the evidence of Mr. Rickcord, who was the man who actually set it up. They paid his full salary from December 1, 1936. He was instrumental in setting it up. They paid his office rent, paid his clerks. They paid his rent for the administrative offices of G.H.A.

The Court: I may not have a correct understanding of that. I do recall that there was testimony of one of the doctors in the early stages of the matter that indicated that Mr. Rickcord had something to do with it.

Mr. Lewin: I think it is in evidence that he talked to Mr. Rickcord generally about the plan.

The Court: I will put my decision upon a broad basis, and that is the first ground.

The second ground is put in as secondary, and I thought I was correct in my understanding of it.

I do recall that there is something in the evidence—I think it came out in the Government's evidence, perhaps, showing losses—indicating what may be termed a suspicion that the Filene Fund was back of it; but when you take your offer of evidence now, which indicates that no actual financial assistance was given, no actual support to the organization itself, after it got started was given until August, 1938. I do not see how that could bear upon anything that was done by the defendants previous to that time.

Objection sustained and exception allowed.

DR. OLIN WEST, a defendant and a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a doctor. I have resided in Chicago since 1922. I was born in Alabama in 1874; was educated in public and private schools in Alabama and at Howard College, and later at Vanderbilt University, where I graduated in 1895, and received a degree of Doctor of Medicine in 1898. I taught chemistry at Vanderbilt, was in charge of the chemical laboratory, taught physics, was afterwards an assistant to the chair of chemistry, associate professor of chemistry and associate professor of materia medica and therapeutics; and an assistant to the chair of physiology. I practiced medicine from 1898 until 1910 at Nashville, Tennessee, serving also as secretary to the Tennessee State Medical Society; became director of public health for the State of Tennessee for the Rockefeller Sanitary Commission; later as state health officer and secretary of the State of Tennessee Board of Health. I became field secretary of the AMA in April, 1922; later I became secretary of the Bureau of Health and Public Instruction, and I am now secretary and

general manager of the AMA. With reference to national defense at present I am secretary of the Committee on Medical Preparedness of the AMA. I am secretary of the Judicial Council, and secretary of the Council on Scientific Assembly of the AMA, although I have no vote on either council. The AMA is a federacy of constituent state and territorial associations. There are one or two states in which there are no county societies, but district societies. The House of Delegates of the AMA is the policy-making and legislative organization, and is composed of delegates from constituent state and territorial associations. Each scientific section of the general assembly has one delegate, and medical corps of the United States Army has a delegate, the medical corps of the United States Navy has a delegate, and the United States Public Health Service has a delegate. The House meets annually or when special sessions are called. The House is the body which formulates the policies of the AMA, and during the interim between meetings of the House the Board of Trustees is authorized to act for the House. The Board of Trustees has nine members, elected by the House of Delegates. The Executive Committee, consisting of three members of the Board of Trustees, meets once a month, except during the summer. The Board of Trustees has its own secretary. As secretary I report to the House of Delegates and keep minutes of the House of Delegates and perform such other duties as are stipulated in the by-laws. As general manager I am the representative of the Board to administer the affairs of the Association and its officers, with the cooperation of the official staff of the AMA. The AMA was formed in 1847 to promote the art and science of medicine, and to better the public health, and they are its only objects, and have been pursued ever since the constitution was written. The Association publishes a Journal and nine other scientific journals devoted to special fields, and are now publishing a journal devoted to military medicine, that is, the medicine of war. It publishes a quarterly cumulative index medicus, an index of the medical literature of the world, the only publication of its kind in existence, and through these publications there has been formed a medium for the discussion of scientific opinion not only in this country, but the world, thereby promoting the art and the science of medicine. It publishes a magazine for the general public called Hygeia, and has distributed millions of leaflets and

pamphlets designed to instruct the public in the prevention of diseases, and on the subject of health. The publications are scientific publications with editorials pertaining to scientific matters. Abstracts from other publications about scientific medicine are published, as well as a section devoted to medical organization. Queries and answers are also published. In Hygeia an effort is made simply to disseminate information helpful to the public. Two bureaus of the Association answer from ten to twenty thousand letters a year, one, the Bureau of Health Education; the other, the Bureau of Investigation, though the latter is concerned largely with fighting' frauds and quackery in medicine.

My first knowledge of Group Health came when I learned of the charter, but I was informed that a plan was under consideration possibly in April or May of 1937, though I have no documentary evidence to that effect. In May or June I came to Washington to discuss the matter of Group Health with members of the Medical Society. Of the doctors present, I had met Dr. Hooe, Dr. Ruffin, Dr. McGovern, Dr. Macatee, and Dr. Reede, but on that occasion I was in Washington on official business of an entirely different nature and was accompanied by no other person from the AMA. At the time I offered a suggestion that the Medical Society might consider a plan for providing medical service to members of the low-income group, as the Society had not only contemplated such a plan but had given one long consideration and had begun organizing it.

A prepayment plan for medical service of some group in Washington was discussed at the AMA meeting in Atlantic City in June, 1937, where Dr. Woodward made a statement, but I don't recall any instructions being formulated by the Board of Trustees with reference to anything that the AMA should do in the premises. In June, at the meeting of the House of Delegates, I received some information in letters from various persons concerning Group Health. Later in September the Board of Trustees instructed Dr. Fishbein and me to develop the facts on Group Health and publish them. We developed what information we could and Dr. Woodward, who was instrumental in getting a considerable part of that information, was asked to prepare a statement for publication in the Journal. My recollection is that such a statement was published in the October 2, 1937, issue of the Journal, though I didn't personally participate in

the preparation of the article, except that I made a suggestion as to one or two sentences, perhaps paragraphs. In seeking information about Group Health I made inquiries in Washington and visited certain persons in official positions in an effort to secure facts to present to the medical profession and to the public. I conferred with Dr. Conklin, Senator Copeland, another Senator, and tried to secure a copy of the contract between Group Health and those who purchased its services, as I thought it was highly important to know what Group Health promised to deliver under such a contract; whether the plan was sound and whether it was to render medical service as an incorporation, which we believed to be an illegal thing; and whether it would have an adequate staff to provide good medical service in quantities indicated in its contract. I was unable to secure that information through any available source.

I was present at the November 6 meeting in Chicago, attended by Drs. McGovern, Hooe, Leland and Woodward, and an abstract of that conference read in evidence (Gov. Ex. 117) was prepared by a stenographer in my office, but it is not a verbatim report. I only recall attending one meeting of the District Medical Society and that was many years ago, and it had nothing whatsoever to do with Group Health. I did not attend any meeting of the District Medical Society pertaining to Group Health. I visited the offices of the Medical Society on possibly three occasions, but not specifically for the purpose of discussing Group Health, though it quite possibly was discussed. I never discussed Group Health with Dr. Cutter until considerably after the time of its organization and the beginning of its plan. I don't recall that I ever discussed the matter with Dr. Leland until after the Atlantic City session at which the matter was discussed and that discussion with Dr. Leland was purely incidental. After Group Health began its operations I had some discussion with Dr. Leland and many other persons, as the newspapers were full of it, and as I had been instructed to develop the facts, and publish them. I don't recall any conference that I ever had with Dr. Cutter, about the matter. I knew nothing of the minutes of the Medical Society meeting until they were read during this trial, though I may have seen some extracts from the minutes if they were sent to my office.

When mail comes into the AMA offices in Chicago, except that marked "Personal," it is sent to a central distribution

point, and where letters are delivered in one département that probably should have been called to the attention of another department, a copy might be sent there.

Gov. Ex. 144 is a letter dated October 19, 1932, which I wrote as secretary of the Judicial Council and at the instruction of it, to Dr. R. W. Baird, Dallas, Texas.

Defense counsel read Gov. Ex. 144 to the jury as follows:

"I have been instructed to send you a copy of the decision of the judicial council of the American Medical Association in the appeal of Dr. R. W. Baird, et al. from the decision of the Board of Councilors of the State Medical Association of Texas, this appeal having been heard by the judicial council in Chicago on September 21, 1932. This decision is as follows:"

This letter (Gov. Ex. 144) was sent on the instruction of the Judicial Council issued to me as secretary of the council. I had no knowledge of the facts which entered into the decision of the council, other than what I heard at the discussions at the time the Judicial Council gave its official consideration to this appeal.

I did not take part in the deliberations of the Judicial Council in 1932. I had nothing whatever to do except serve as secretary and perform the functions of that office. I had no vote.

Defense counsel continued reading Gov. Ex. 144 as follows:

"Decision by the Judicial Council.

"The fundamental issue in dispute in this case is the ethical character of certain contracts held by the appellants to give medical service to groups of people on a monthly per capita plan of payment. No essential facts of the contracts were in dispute.

"It is contended by the appellants that these contracts are not in violation of all or any of five conditions which the Judicial Council has declared at various times are conditions, which obtaining, make a contract unethical. The Dallas County Medical Society which sentenced these appellants to suspension contended that these contracts violated all five of these conditions. When, in its constitutional function as authority over ethical matters, the Judicial

Council expounds the subject of contract practice and lays down certain principles which when present create an unethical contract it is not to be assumed that those are the only principles which may have that effect. A fundamental of medical ethics is that anything which in effect is opposed to the ultimate good of the people at large is against sound public policy and therefore unethical. On the five points mentioned the appellants presented a strong argument which might be convincing if a narrow or local view only is considered. Nevertheless the Judicial Council is of the unanimous opinion that this type of contract is unethical on the basis of being contrary to sound public policy.

"The appellants were at the same time convicted of violation of a by-law of the society forbidding the holding of certain contracts and pleaded error in the trial on a technical procedure. This phase of the appeal was not pressed by either side but from such records as were submitted to the Council it is of the opinion that no reversible error was proven."

I wrote Gov. Ex. 138.

Defense Counsel read Gov. Ex. 138 to the jury as follows:

"January 31, 1935.

DEAR DR. McLEAN:


I regret exceedingly that because of the tremendous press of work, a massive correspondence and unusual demands on my time, I have found it utterly impossible to make prompt replies to many letters that have come to me within the last six weeks. Among those that have unavoidably accumulated on my desk is your letter of January 10."

By Mr. Leahy:

Q. Doctor, what occasion had you for writing this letter other than the letter written to you by Dr. McLean?

A. None, sir.

Mr. Leahy: "The Ross-Loos Clinic in Los Angeles was established some years ago and operated in the usual manner as a clinic quite similar to numerous other groups of physicians in various parts of the country. A year or two ago, more or less, this clinic group entered in agreements with the employees of certain organizations, or with the organizations themselves, whereby the clinic agreed to pro-



vide necessary medical service for stipulated sums, the idea being, as I understand it, that each employee concerned should pay a certain amount each month into a common fund and that the clinic should be paid on the basis of the number of employees concerned in the various groups. Among the groups that entered into this arrangement, as I am informed, was the group composed of firemen employed by the City of Los Angeles.

"It is claimed by the Ross-Loos Clinic and, according to my information, by the members of the groups who have arranged to secure medical service through that clinic that the plan has been mutually satisfactory. The Los Angeles County Medical Association, however, appears to have considered the scheme to be unethical. Doctors Ross and Loos were cited to appear before the proper official body of the Los Angeles County Medical Association and were dropped from membership in that organization after a hearing of the charges preferred against them. Doctors Ross and Loos appealed from the decision of the Los Angeles County Medical Association to the Council of the California Medical Association, and that Council upheld the decision of the county society. I understand that Doctors Ross and Loos intend to appeal to the Judicial Council of the American Medical Association, but up to this time no appeal has been filed.

"I can offer you nothing more than my personal opinion concerning contracts of the kind which seem to have been made between the Ross-Loos Clinic and various groups. That opinion is to the effect that all such arrangements are potentially dangerous to medicine and are not in the public interests. I am quite sure that some of the professional groups that have entered into such contracts are thoroughly capable and that they have no doubt given good service under these contracts. In my opinion, the weaknesses and dangers of contract practice are, however, inherent in all of these plans. When one such group of physicians appears to have succeeded financially in an undertaking of this kind, their success will almost surely stimulate the development of similar schemes under the direction and control of less competent and less responsible persons with the result that a vicious circle of underbidding will be established, and inevitable deterioration in the quality of medical service will result.

"I am asking our Bureau of Medical Economics to send you some printed material having a bearing on this general subject."

This exhibit merely reflects such facts and information as I had. The appeal mentioned did come to the Judicial Council and the decision of the California Medical Association was reversed in accordance with or on the grounds of errors in procedure, and failure to be guided by the organization's law of the Los Angeles Medical Society, and the California State Medical Association, one or both. The constitution and by-laws of the AMA specifically stipulate that the jurisdiction of the Judicial Council in such appeals shall be only with respect to questions of law and procedure; that is, organization law and procedure. Following this reversal the Ross-Loos case has never come to the Judicial Council again, and Drs. Ross and Loos are still members of the AMA. When I expressed my personal opinion in the letter of the contracts of the kind made by Ross-Loos Clinic and various other groups, I referred to my belief that many of the schemes of this particular class are potentially dangerous. That belief was founded upon large observation and experience, not only of my own, but on the experience of the medical profession. Group practice has several definitions. My own conception of it is that of a practice carried on by a group of physicians acting on their own responsibilities, and not responsible to anyone else, who are combined together for the purpose of furnishing as complete as possible medical service to members. In regard to group practice, both consumer and producer groups, the House of Delegates of the American Medical Association in Cleveland, in 1934, adopted a set of principles that were intended to serve for the guidance of prepayment group plans for the provision of medical care to certain income groups. The AMA has not been opposed, as a general policy, to all group plans, whether prepayment or otherwise, in the United States, and has declared no policy against the group practice of medicine, as such. The type of character of group practice which the AMA has opposed is any group practice which offers to do more than it is believed can be done under the terms on which its service is to be delivered. It has opposed group practice that is controlled by corporations, because it believes that a corporation cannot be engaged in the practice of medicine and cannot qualify to

engage in the practice of medicine. It has also opposed group practice where conducted by men known to be disreputable and irresponsible, and who have established a record for irresponsibility and for lack of professional qualifications and ethics. Where a group is practicing, and qualified to do so, and renders complete medical care in accordance with its contract, the AMA has no attitude to it other than to offer principles for the guidance of its work, and today many members of the AMA are engaged in the group practice of medicine of all types and have been over a period of years. When I made the statement in my letter of January 31, 1935:

"When one such group of physicians appears to have succeeded financially in an undertaking of this kind, their success will almost surely stimulate the development of similar schemes under the direction and control of less competent and less responsible persons with the result that a vicious circle of underbidding will be established."

I had in mind that a great number of contracts and group plans of all kinds had developed, some of which offered far more than they could deliver, and some of which had no intention of doing what they had agreed to do; in several instances where an organization of this kind was developed by responsible groups, irresponsible groups developed the same kind of program, offering far more for far less, when it was known it would be impossible for it to give good medical service. In other instances, a group is opposed when it delivers poor services, apt to be as harmful as helpful. The character of opposition that the AMA takes to such groups is none other than to attempt to develop the facts and make them known through publication in the associations' own publications and in reply to letters received. The AMA institutes no other methods of opposition that I know of.

Gov. Ex. 141 is a letter which I wrote to Dr. Frieberg, Cincinnati, Ohio, on February 6, 1936.

Defense counsel read Gov. Ex. 141 to the jury as follows:

Q. Doctor, the very opening sentence of your letter as shown by the carbon copy under date of February 6, 1936, is (reading):

"Your letter of February 4 has just come to hand."

What other occasion had you for writing than the fact that you had just received a letter when you wrote No. 141, the carbon of which you hold in your hand?

A. I presume you want me to refer to any circumstances that may have occurred before I received this letter?

Q. What occasioned the writing of this letter?

A. I received a letter from Dr. Frieberg to whom my letter is addressed.

Q. Doctor, in this letter you state as follows (reading):

"I am sorry indeed to know that anybody in Cincinnati is preparing to begin operations of a plan made more or less famous, or infamous, according to the point of view, by Doctors Ross and Loos in Los Angeles. I am quite convinced that the Ross-Loos scheme is a violation of the principles laid down by the courts of California which have repeatedly insisted that the corporate practice of medicine is illegal in that state. I am just as strongly convinced that it is relatively easy to evade the law. What is in effect a corporation may be organized under the designation of partnership. I believe that schemes of the Ross-Loos type will inevitably tend to the creation of a demand for the solicitation of medical practice, and I am quite convinced that the operation of such schemes will inevitably cut the ground from under the feet of the private practitioner."

When you stated that "schemes of the Ross-Loos type will inevitably tend to the creation of a demand for the solicitation of medical practice," to what did you refer?

A. I referred to the fact that, as I stated a few minutes ago, the operation of such plans very frequently leads to the development of other plans by less responsible persons, in many instances, who do not hesitate to resort to any method that may be available to them for securing practice.

Q. When you said "solicitation" what did you refer to by that?

A. I meant asking patients to come to an individual or to a clinic or anything else, whether it be an institution or an individual.

Q. Is the American Medical Association opposed to the solicitation of patients?

A. The principles of medical ethics of the American Medical Association, which have been adopted independently by the constituent territorial associations, with perhaps one association that has adopted it in a way, but which has its

own code of ethics also, distinctly declare that the solicitation of patients is an unprofessional procedure.

Q. What is the basis of the principle of ethics that solicitation is an unethical procedure?

A. Just a common sense basis, that a man who goes out and begs patients to come to him and offers them some attraction to come to him is guilty of an unethical practice. He has nothing to sell other than his own qualifications and knowledge and ability as a practitioner; and it certainly is not the part of an ethical physician to glorify himself to patients and to solicit patronage.

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Q. Were you speaking from personal knowledge, or otherwise, Doctor, when you made that statement in the letter to which I have just drawn your attention?

A. I was speaking entirely from the results of my own personal observation.

Q. You wrote in that same letter (reading):

"I am informed that Doctors Ross and Loos are thoroughly competent physicians and that they have associated with them young men who are well qualified. I have heard from various sources that the Ross-Loos clinic actually delivers good medical service. These two facts, of course, operate very strongly against any movement designed to put a stop to the utilization of mass production methods in the practice of medicine and to preserve the individual private practitioner as the most important entity in the field of medicine. It would take a great deal of argument to convince me that any scheme to use mass production methods will operate to the advantage of scientific medicine or in the interest of sound public policy."

Doctor, to what did you refer when you stated that mass production methods in the practice of medicine were not in accordance with what you believed to be good, sound public policy?

A. Of course I meant exactly what I said, that I did not believe it is possible to practice medicine on a mass production basis and do justice to the patient or to deliver the best quality of medical service under any such conditions.

Q. Why is that, Doctor?

A. Simply because one individual patient may require three hours for proper attention and another may require

ten minutes; and what is good for one patient may not be good for another who has exactly the same diseased condition. They have got to be handled separately and examined separately, and all the factors that enter into the diagnosis and treatment have got to be individually considered.

Q. When you stated to Dr. Frieburg that you had information that Doctors Ross and Loos were both able and qualified men and that they had about them a staff of qualified physicians, were you giving the correct information that you had at hand at the time?

A. Yes, and I should like to say, if I may be permitted to do so, that this letter was written in 1936, and that in a letter, or maybe one or two letters, that I had previously written I had not made the same statements, for the reason that I did not then have that information.

Q. In other words, the information which you gave to Dr. Frieburg in 1936 was based upon information which had come to you in between the time of previous correspondence and this?

A. It had come later. I had written some of the other letters in which I did not make a similar statement. I tried to be perfectly fair to those men. I had lines from men who knew the quality of their practice, and I had conferred with Dr. Loos himself, and I did not hesitate to make the statement that is made in that letter, that I had information that they were competent physicians. I believe I stated in one place that they had surrounded themselves with a staff of competent physicians. I certainly had no idea of doing them any injustice, and I tried to do them full justice.

Q. (Reading further):

"I am rather inclined to the opinion that each separate county medical society will have to deal with the questions involved and the matters referred to in your letter on the basis of conditions that actually exist in its own community, and I am sorry that I cannot offer you any very helpful suggestion.

"With my sincere good wishes, I am

"Very truly yours,"

What did you refer to, Doctor, when you make the statement in the letter that "each separate county medical society will have to deal with the questions involved on the basis of conditions that actually exist in its own community"?

Mr. Lewin: Is there any ambiguity about that?

Mr. Leahy: Yes. It is very important.

Mr. Lewin: I object to it.

The Court: I think you may ask him to state his reasons for that statement.

By Mr. Leahy:

Q. Will you state the reasons for that statement? Oh, in other words, Doctor, what is there about the practice of medicine as it refers to group practice that is different in one community from conditions existing in another community?

A. Mr. Leahy, the American Medical Association—I hope I will not take too much time in making this statement.

Q. Make it as briefly as possible.

A. The American Medical Association has been rather severely criticized for not having produced a plan of private medical service for the members of low-income groups in all the United States. The American Medical Association has made a very determined, persistent, and honest effort to develop such a plan, but it becomes perfectly apparent on a study of the situation that it cannot be done. A plan that would serve satisfactorily in an industrial state, like New Jersey or Pennsylvania, could not possibly be applied successfully in an agricultural state like Mississippi. As a matter of fact, no single plan can be prepared or operated by anybody that will work with equal success in all parts of an individual large state; and we have become thoroughly convinced of that after careful and conscientious consideration of the factors involved. Moreover, the American Medical Association believes that it is the right and the duty of the component county medical societies to take the leadership and deal with affairs within their own jurisdictions; and the American Medical Association has no intention or desire to dictate to a component county society or state medical association what it shall do or shall not do. Its only purpose is to be helpful, simply to carry out the purposes declared in its constitution, to promote the art and science of medicine and the betterment of the public health. That can be done by the extension of medical service and by the protection of the quality of medical service; and that is all it can do.

Gov. Ex. 166 is a letter which I wrote to Dr. J. N. Baker, Montgomery, Alabama on February 29, 1936.

Defense counsel read Gov. Ex. 166 to the jury as follows:

"I am greatly obliged to you for your kindness in sending me a copy of a communication dated February 25, addressed to the presidents of certain county medical societies in Alabama and to the chairman and members of the Committee on Public Relations of the Medical Society"—I guess that is "Association" written over—"of the State of Alabama.

"I am glad indeed to know that the Tennessee Valley Authority is in no way officially concerned with the problem of medical care. I sincerely hope that the county medical societies in the counties directly interested will give most careful and exhaustive consideration to any plans that may be proposed for providing medical service on a group basis. Confidentially I may say to you that the more I hear and think about many of the experimental plans now in operation the more concerned I become. I cannot but feel that there are grave dangers inherent in practically all of them and that they tend toward the development of a sentiment for state control of medical practice. I wonder if any of them have a sound actuarial basis. I wonder if it is wise to teach people that it is possible to render really good medical or really good hospital service for a nominal sum. Personally I do not believe that it is possible, whether it be done on a group basis or otherwise. I am very much afraid that a tendency has already developed to raise the ante, so to speak, in many of these experimental plans, either by increasing the incomes of the members of which are large enough to enable them to pay for needed medical service, or by increasing the membership fee. Moreover, I am fearful that the group hospital plans which are rapidly developing and which in many places are being tied up with other plans for providing medical service, may result in putting the hospitals directly into the practice of medicine. There is no doubt in my mind that this very development is now in progress, and I am almost willing to predict that it will not be very long in some places before the professional members of hospital staffs will find themselves dictated to by lay boards and lay administrators as to what they shall do and what they shall not do.

"Please understand that this letter is in the nature of a purely personal chat. I do not of course wish to discourage the efforts of any medical society that has given full consideration to the problems that have arisen within its own jurisdiction and that has become convinced that some sort of experimental plan is necessary."

When you wrote that last paragraph, Doctor—

"I do not of course wish to discourage the efforts of any medical society that has given full consideration to the problems that have arisen within its own jurisdiction"—

were you then referring to the statement which you gave us a moment ago that each local medical association should determine the problems within its own jurisdiction?

A. Yes; I was referring to that. I was also referring to the fact that the House of Delegates of the American Medical Association had encouraged societies that, after careful investigation of the facts on the basis of their best judgment, believed that it was necessary to develop some sort of unusual plan to provide service for the members of low-income groups and should undertake it on an experimental basis; and a number of societies in various parts of the country had initiated such plans after they had studied conditions within their own jurisdictions.

Q. Were they group plans?

A. They were plans that were organized by the medical societies themselves, and every member of which, that was willing to participate in it, was available for any person that desired his services.

Q. Were they on a prepayment basis?

A. I think most of them were. Some of them, according to my recollection, were not.

It is not only my custom, but my duty as secretary and manager of the AMA to attend each and every convention of the AMA. I recall a resolution or action taken by the House of Delegates with reference to hospitals practicing medicine, wherein it was suggested that there be cooperation between the Judicial Council and Dr. Cutter's bureau with reference to certain evils existing.

I wrote Gov. Ex. 143 in reply to Gov. Ex. 142.

Défense counsel read Gov. Exs. 142 and 143 to the jury as follows:

Gov. Ex. 142 is dated March 14, 1936, directed to Dr. West, the American Medical Association, Dearborn Street, Chicago, and reads as follows (reading):

"This is merely a personal note to you for your information and use as you may think best. It may be known to you that Dr. George H. Cooke has been and is trying to organize a group clinic in Cincinnati on the identical plan of the Ross-Lóos clinic in Los Angeles. Dr. Cooke is a member of the Butler County Medical Society but not of the Cincinnati-Hamilton County Academy of Medicine. Cooke addressed the Council of the Academy asking what would be its attitude towards members joining his group. The Council referred this to the committee on the Costs of Medical Care of which I am chairman. This committee advised the Council that no reply to such a question was coming to anyone not a member. Upon advice of the committee the Council submitted the matter with full information regarding all of the circumstances to the Academy as the special order of business of March 10. They submitted three questions to which they requested specific replies. In substance these were (1) Does practice under such a prepayment group plan constitute a violation of Article 6, Section 2, of the Principles of Medical Ethics? (2) Should membership in the Academy be withheld from practitioners who are practicing in such violation? (3) Shall practice by members of the Academy in such violation be considered sufficient ground for the termination of membership?

"The meeting was well attended and the vote was in the affirmative, with only four dissenting. There was ample discussion with but one speaking for the negative. The meeting was not executive purposely. There was some adverse newspaper comment with the usual misunderstanding of the real issue.

"It is the object of this letter to furnish you with this information to invite your frank comment and to suggest that if you wish full information you write to the secretary of the Academy requesting it.

"With very kind personal regards, I am"—

To which Dr. West replied on March 18, 1936, Gov. Ex. 143 (reading):

"My dear Doctor Frieburg:

"I am greatly obliged to you for your personal letter of March 14. I am glad indeed to have the information sub-

mited. I sincerely hope, of course, that the Cincinnati Academy of Medicine will be able to head off the establishment of all sorts of group schemes of the nature referred to in your letter, because I am quite convinced that these schemes do not operate to the advantage of medicine or the medical profession or of the public. I do believe that they are opposed to public policy. While I have frequently heard that the clinic mentioned in the first paragraph of your letter, which has been operating in Los Angeles for some time, has heretofore been rendering good medical service, I have heard it intimated within the last week that the quality of the service rendered by that concern is gradually deteriorating. As far as I am personally concerned, I am quite convinced that this is an inevitable result of the operation of such schemes.

"If I secure any further information from authentic sources I shall pass it on to you.

"With most cordial good wishes I am

"Very truly yours,"

When I wrote that "I have heard it intimated within the last week that the quality of the service rendered by that concern is gradually deteriorating," I was truthfully and correctly expressing information which I had at that time. It was within a week of the time of this letter that I heard that the quality of medical care of the Ross-Loos Clinic was deteriorating. But I will, in order to be perfectly fair to everybody concerned, be glad to state openly here that I later heard from quite as reliable sources that the Ross-Loos Clinic was continuing to render good medical service. I have no intention or desire to be unjust to anybody and I do not want to do anybody any harm, and I would be glad to make amends for any statement, even though I considered it to be reliable and authentic, that was later refuted by another statement from equally reliable and authentic sources.

I received Gov. Ex. 104 from Mr. Hendricks who is the executive secretary of the Indiana State Medical Association. My best recollection is that Mr. Hendricks had heard something of these plans and had talked to me either over the phone or in a personal visit, about the plans referred to in that statement.

Defense counsel read Gov. Ex. 104 to the jury as follows:

Ladies and gentlemen, this is a letter dated June 22, 1937, on the official stationery of the Indiana State Medical As-

sociation, in which Thomas A. Hendricks, Executive Secretary, says to Dr. West (reading):

"We enclose a copy of the confidential report which gives details of the plan for a cooperative medical service in Washington for Federal employees."

The enclosure is a rather long one, marked "Confidential. For Private Circulation Only," and entitled "A Plan for a Cooperative Medical Service on a Periodic Payment Basis for Federal Employees and Their Families in Washington." I shall not take the time to read that exhibit, because it is a bit lengthy.

I wrote Gov. Ex. 103 to Mr. Hendricks, on June 27, 1937.

Defense counsel read Gov. Ex. 103 to the jury as follows:

"I am very greatly obliged to you for your letter of June 22, for the memorandum attached to it, and for the copy of a plan for a cooperative medical service on a periodic payment basis for Federal employees and their families in Washington.

"While we already had a copy of this plan and practically all of the information submitted in the memorandum attached to your letter, we are nevertheless grateful to you for sending us the material that accompanied your letter, and especially for the information pertaining to the small group in Washington that seems to be acting as a steering committee for the organization of cooperative medical services among various governmental departments. We had not been able to secure this particular piece of information. We had information for two or three months that a movement has been started to organize medical service plans for government employees. We have made very diligent efforts to ascertain all the facts, and we are still persisting in these efforts.

"Since the Atlantic City session Dr. Woodward has been in Washington for a large part of the time and has had interviews with officials of the H.O.L.C., the Resettlement Administration, the Brookings Institute, and numerous others. The only thing we have tried very hard to secure is a copy of the contract to be entered into between the cooperatives and their members. Our own efforts as well as the efforts of persons in high official positions in Washington have been altogether unavailing, and we have not

been able to secure a copy of the contract nor any specific information about its provisions. If you can succeed in securing any additional information we shall appreciate it if you will pass it on to us, just as we have fully appreciated your helpfulness in connection with other matters in the past.

"Very sincerely yours,"

I received Gov. Ex. 106 from Dr. Herbst and I wrote Gov. Ex. 105 in reply. (Defense counsel read Gov. Exs. 105 and 106 to the jury.) I recollect that I read Gov. Ex. 177. (Defense counsel read Gov. Ex. 177 to the jury.) Gov. Ex. 135 is an extract from the minutes of the Board of Trustees of the AMA of June 29, 1937. Gov. Ex. 152 is a letter which I wrote. (Defense counsel read Gov. Ex. 152 to the jury.) When I made the statement that "The principle of collective bargaining cannot properly be applied to medical service," (Gov. Ex. 152), I had in mind that you cannot apply mass production methods to medical service. I later withdrew (Gov. Ex. 152) my suggestion to the District Society that they develop a medical service plan under their own auspices.

I wrote Gov. Ex. 153 to Mr. Charles Wright who at the time this letter was written was a member of the Board of Trustees of the AMA. (Defense counsel read a portion of Gov. Ex. 153 to the jury.) Gov. Ex. 200 came to my attention. Gov. Ex. 294 came to my attention. It is a copy of the statement prepared by Dr. Woodward which later appeared as an article in the Journal on October 2, 1937. It is not exactly the same as some changes were made before publication. Gov. Ex. 293 is a copy of the Journal article of October 2, 1937.

I wrote Gov. Ex. 154.

Defense counsel read Gov. Ex. 154 to the jury as follows:

This is Exhibit 154, dated October 7, 1937, directed to Dr. C. B. Conklin, Washington, D. C., Secretary, Medical Society of the District of Columbia (reading):

"DEAR DR. CONKLIN:

"I am grateful indeed to you for your kindness in sending me a copy of the resolutions to be presented by the Executive Committee of the Medical Society of the District of Columbia and to be considered, as I understand it, at a meeting of that society to be held tonight.

"I confess that I feel somewhat concerned over the possibility of adoption of these resolutions by the District Society, because I am somewhat afraid that if they are adopted the promoters of Group Health Association, Inc. will be greatly encouraged and may be stimulated to exert efforts to extend these efforts beyond the scope that I understand they originally intended.

"I also entertain some fear that if the resolution is adopted as it now stands, the proponents of compulsory sickness insurance who are now devoting their efforts to the establishment of all sorts of voluntary insurance schemes, knowing full well that voluntary insurance has always been the forerunner of compulsory insurance, will redouble their efforts to bring about the establishment of all sorts of plans for group prepaid medical service. I fear that even the slightest implication of approval of the activities of incorporated groups may result in stimulating the organization of similar groups elsewhere than in the District of Columbia, and possibly give considerable impulse to the development of corporation practice.

"You know very well, of course, that I have no disposition whatever to intrude in the affairs of the Medical Society of the District of Columbia, and I hope that neither you nor anybody else will feel that this letter is intended to be even in the least degree in the nature of such intrusion.

"With my sincere good wishes, I am

"Very truly yours,"

Well, about the time that letter was written there was a very determined effort being made to promote movements designed to bring about the establishment of systems of compulsory sickness insurance in some of the states, and the proposal had been made that such a system should be organized under the auspices of the Federal Government. It is true that in many of the instances where compulsory sickness and insurance plans have been put into effect the forerunners of those plans were voluntary sickness insurance plans. The American Medical Association has made most exhaustive and careful study of the workings of compulsory sickness insurance plans or systems in several countries, and is convinced beyond any doubt whatever that they do not contribute to the advancement of scientific medicine and that they do not serve the best interests of

the public. The Association believes and its House of Delegates has repeatedly expressed its opinion and established its policy, that a system of compulsory sickness insurance in the United States on a Federal basis would be destructive of all the best values and elements—

I received Gov. Ex. 111. I wrote Gov. Ex. 110 to Dr. Conklin in reply to Gov. Ex. 111. (Defense counsel read Gov. Ex. 110 to the jury.)

The annual conference of the secretaries of the constituent state medical societies is held at the office of the AMA each year to which the secretaries of all constituent state associations are invited along with the editors of all state medical journals and the officers of constituent state medical associations. The purpose of the conference is to give the secretary and editor of the various state associations an opportunity to become acquainted with the actions of the AMA, to confer among themselves, and with the official representatives of the Association, including the heads of departments and the members of the boards of trustees as to matters of common interest relative to the organization sources and the work of the state associations in relation to the work of the AMA, or their relation to other medical organizations.

I received Gov. Ex. 108 and wrote Gov. Ex. 109 in reply. (Defense counsel read Gov. Ex. 108 and 109 to the jury.)

I wrote Gov. Ex. 112 to Dr. Tibbals who is secretary of the Utah State Medical Association. The only occasion for this letter was to reply to his letter of October 26. (Defense counsel read Gov. Ex. 112, dated October 29, 1937, to the jury.)

Q. Doctor, when you made the statement:

"The American Medical Association has very actively opposed the plans of Group Health Association, Incorporated,"

to what did you refer as the opposition contained therein?

A. Our efforts to develop all the facts that could be had in order that they might be published for the information of the profession; the various medical organs of the country, and who else might be interested.

Q. What other form of opposition up to that time had been instituted in regard to anything connected with Group Health Association?

A. Nothing other than was incidental to efforts to collect the facts for the purposes indicated.

I wrote Gov. Ex. 114 to Dr. Conklin. (Defense counsel read Gov. Ex. 114 to the jury.) I sent Gov. Ex. 115 and received Gov. Ex. 116. Following these telegrams the conferences of November 6 at Chicago between me, Dr. Hooe, Dr. McGovern, Dr. Woodward and Dr. Leland was held.

I wrote Gov. Ex. 113 to Dr. Tibbals and gave him additional information which he requested on November 4.

Defense counsel read Gov. Ex. 113 to the jury.

Gov. Ex. 117 is a resume of the conference of November 6 held at Chicago. It is not a verbatim report.

Q. On page 7, I direct your attention to the statement made by Dr. Hooe, and the statement made by Dr. West. Did you hear those statements read as from that abstract, Doctor?

A. I think I heard it read here.

Q. Does that abstract correctly report what you said on that occasion?

A. No, it doesn't.

The Court: You may take the opportunity of reading that part of it.

The Witness: I don't know whether it is a matter of great importance; it does support my statement that it is not a verbatim report. It says:

"Dr. Hooe: Is it not, in your opinion, most reasonable that the hospitals should acquiesce in this matter?

"Dr. West: It is reasonable that they should do it, but as to whether or not they will, that's another question. Suppose they don't?"

Now, I am quite sure that I did not express a definite opinion as to whether it was reasonable, but I raised the question as to whether it would do any good to attempt what was proposed. As a matter of fact, I believed the hospitals should control their own affairs.

I wrote Gov. Ex. 161 to Dr. Knopf. The only occasion for writing this was in response to his letter of November 3. (Defense counsel read Gov. Ex. 161 to the jury.) I wrote Gov. Ex. 118.

Defense counsel read Gov. Ex. 118 to the jury as follows:

It is dated November 9, 1937, addressed to Dr. Robert A. Hooe, 1746 K Street, Northwest, Washington, D. C. (reading):

"MY DEAR DR. HOOE:

"I am sending you herewith by air mail special delivery two copies of an abstract of the notes taken at the conference held in my office on last Saturday. I am also sending you a copy of this abstract by registered mail."

"We were greatly pleased to have a visit from you and Dr. McGovern, and I hope that matters will be satisfactorily adjusted."

The abstracts referred to were those of the conference in Chicago on November 6 (Gov. Ex. 117). I received Gov. Ex. 156 to which Gov. Ex. 155 is my reply. (Defense counsel read Gov. Ex. 156 and 155 to the jury.) The instructions referred to in Gov. Ex. 155 are those in Gov. Ex. 135, Minutes of Meeting of Board of Trustees, June 29, 1937, in which it is stated: "That Doctors Woodward and Leland be requested to go to Washington to see what they can learn and try to advise the Medical Society of the District of Columbia if that Society is willing to accept advice." Later other instructions were given at a meeting of the Board of Trustees where Dr. Fishbein, as editor of the Journal, and I, as secretary and general manager of the Association, were instructed to develop the facts as far as we could about Group Health and have a statement prepared for publication in the Journal.

I wrote Gov. Ex. 120 to Dr. Wise on November 16, 1937, simply by way of answer to a letter from him of November 12, 1937. In the preparation of replies to letters which I received from various individuals I did not collaborate with any of my fellow officers of the AMA, except, perhaps, if I wanted information that I did not have I may have asked them for it before I wrote the letter.

(Defense counsel read a portion of Gov. Ex. 137 to the jury.) I was present at this meeting of the Judicial Council and these minutes were prepared by me or under my supervision. Several complaints had been received about Dr. Richard Cabot, a brother of Dr. Hugh Cabot, and these were referred to the Judicial Council. Apparently the Judicial Council thought it had no jurisdiction over complaints of this character because I was instructed to refer

them to the secretary of the Massachusetts State Society and that was the end of the matter.

(Defense counsel read Gov. Ex. 120, letter dated November 16, 1937, from Dr. West to Dr. Wise, to the jury.)

Q. Doctor, when you stated in Gov. Ex. 120 that you had worked as closely as possible with the Medical Society of the District of Columbia, to what did you refer?

A. Well, the American Medical Association worked as closely as possible in cooperation with all constituent state and territorial associations, but I suspect that in this particular instance I had some reference to the matters that were at the time of interest in Washington.

Q. Do you recall now what you referred to when you stated that your efforts began before the Medical Society of the District of Columbia became very active?

A. I think that is true. I think we began an effort to develop the facts about this matter before the Medical Society of the District of Columbia began any action whatever, possibly before they were informed about it. I am not sure of that, but I think it is quite possible.

Q. And those were the efforts which you told us about yesterday?

A. To some extent; yes, sir.

Q. Were there any others which you can recall which related to other matters than the collection of data?

A. As I stated yesterday, anything that transpired was incidental to our efforts to develop the facts.

Gov. Ex. 136 is the minutes of the Board of Trustees meeting of November 18 and 19, 1937. I was present at this meeting as secretary and general manager of the AMA. (Defense counsel read Gov. Ex. 136 to the jury.) I do not recall that the AMA had done anything further with reference to Group Health than is reported in these minutes. It had simply made an effort to develop the facts and to make ready to publish the facts.

I wrote Gov. Ex. 157. (Defense counsel read Gov. Ex. 157 to the jury.) I wrote Gov. Ex. 159 merely in reply to Dr. Poling's letter. (Defense counsel read Gov. Ex. 159 to the jury.) Gov. Ex. 162 is a letter which I wrote in reply to Dr. Poling's letter of December 27, 1937.

Defense Counsel read Gov. Ex. 162 to the jury as follows:

"DEAR DOCTOR POLING:

I have before me your letter of December 27 and am greatly obliged to you for your kindness in sending me a copy of the resolution adopted by the Mahoning County Medical Society pertaining to the Group Health Association, Inc., of Washington, D. C.

The American Medical Association has done all that it could to oppose this movement in Washington, having begun its efforts in that direction long before the corporation was formed. I am sure you will be interested to know that an official ruling has been issued in Washington to the effect that the appropriation of money by the Home Loan Bank Board for the purposes of the Group Health Association, Inc., was without authorization. However, I am informed that in spite of this ruling the corporation is going ahead with its plans. Doctor Woodward, Director of our Bureau of Legal Medicine and Legislation, has just returned from Washington, having gone there for the purpose of giving such aid as he could to the Medical Society of the District of Columbia in the effort which that Society is making to combat the activities of the Group Health Association, Inc.

As I see it, it is a rather remarkable thing that an agency of the federal government would appropriate money to support a corporation that is to engage in the practice of medicine in the face of the fact that the laws of many states specifically declare corporation practice to be illegal. The Home Owners' Loan Corporation—of the Home Loan Bank Board which is an affiliate of the Home Owners' Loan Corporation—in a brief that has been submitted, takes the position that the Home Owners' Loan Corporation and the Home Loan Bank Board are not agencies of the federal government in the same sense that departments and bureaus of the government are agents. As I understand it, the position is taken in this brief that the monies of the Home Owners' Loan Corporation and the Home Loan Bank Board are not appropriated directly by the federal government but are secured from the public, and that for that reason the Corporation and the Board are not amenable to the same rules as those that apply to other governmental units.

"A number of medical societies in different parts of the country have taken action somewhat similar to that which has been taken by the Mahoning County Medical Society. I presume that you saw the article which appeared in the Journal of the American Medical Association some weeks ago pertaining to this matter.

"With my sincere good wishes for you and the Mahoning County Medical Society in the New Year, I am

"Very truly yours,"

Gov. Ex. 145 is an opinion of the Judicial Council signed by individual members of the Council. (Defense Counsel read Gov. Ex. 145 to the jury.) I was present during part of the hearing of this particular appeal.

I received Gov. Ex. 124.

Defense counsel read Gov. Ex. 124 to the jury as follows:

Gov. Ex. 124, on the stationery of the Harris County Medical Society, Houston, Texas. It is signed "A. T. Talley, Chairman, Board of Censors, and directed to Dr. West."

"DEAR DOCTOR:

"One of our members has accepted a position on the surgical staff of the so-called Group Health Association, made up of the federal employees of the HOLC, located in Washington, D. C.

"Through correspondence with the District of Columbia Medical Society and the unanimous opinion of our local Society, this type of practice is considered unethical and we would appreciate a letter from you stating the view held by the national Association with reference to practice of this type.

"Appreciating an early reply, I am

"Yours very sincerely, A. T. Talley, Chairman,
Board of Censors, Harris County Medical Society."

Gov. Ex. 123 is my reply to Gov. Ex. 124.

Defense counsel read Gov. Ex. 123 to the jury as follows:

This Gov. Ex. 123 is dated February 24, 1938. It is directed to Dr. A. T. Talley, Chairman, Board of Censors, Harris County Medical Society, Houston, Texas.

"DEAR DOCTOR TALLEY:

"Your letter of February 16 was received while I was very busily engaged with a meeting of the Board of Trustees

of the American Medical Association, in which fact is to be found the explanation for my delay in replying.

"The Group Health Association, Inc., of Washington, D. C., is, as its title indicates, an incorporated body. The laws of a number of the states and, as I understand it, the law of the District of Columbia specifically prohibits corporations from engaging in the practice of medicine. My information is to the effect that the United States District Attorney for the District of Columbia and the Corporation Counsel of the District government have both rendered opinions to the effect that Group Health Association, Inc., in conducting the practice of medicine, is operating in violation of the law.

"I am informed that the officers of Group Health Association, Inc., maintain that the corporation is not itself engaged in the practice of medicine but that the physicians in its employ, licensed to practice in the District of Columbia, are practicing medicine in accordance with their rights under their licenses. In my opinion, this is, of course, simply an evasion since persons employed by a corporation are the servants of the corporation. I can hardly conceive that the physicians who have accepted employment with Group Health Association, Inc., are ignorant of the fact that they are employees of a corporation engaged in the practice of medicine and that in that capacity they are a party to a violation of the law since, certainly, it is reasonable to suppose that they are informed of all the facts. Based on the information available to us here, it is my purely personal opinion that a physician who becomes an agent of a corporation engaged in the practice of medicine violates the Principles of Medical Ethics. This, my personal opinion, is offered, of course, for whatever you may consider it to be worth.

"I understand that the officers of Group Health Association, Inc., have stated that if the courts decide that the corporation is illegally engaged in the practice of medicine, the enterprise will be organized on a different basis and will proceed with its operations.

"With most cordial good wishes, I am

"Very truly yours,"

I received Gov. Ex. 122. The original was forwarded by my office to Dr. Follansbee as chairman of the Judicial

Council. Defense counsel read Gov. Ex. 122 to the jury as follows:

"April 21, 1938.

"DR. WEST:

"Dear Doctor: Raymond E. Selders member of the Harris County Medical Society has been indicted by the Society of unethical practice for accepting a position on the surgical staff of the Group Health Association made up of federal employees of the HOLC located in Washington, D. C., due to the fact that Dr. Selders is doing this practice outside Harris County Texas we want an official opinion from the Judicial Council of the American Medical Association that is unethical for him to do this practice without which the Board of Censors will recommend to their Society that the matter be referred to the Judicial Council of the Medical Association direct for adjudication. An immediate answer by wire appreciated as trial comes up the 27th of this month.

"A. T. Talley."

Q. Why was it that this telegram which was directed to you at Chicago, was sent on to Dr. Follansbee?

A. Because it was a matter for decision by the Judicial Council and Dr. Follansbee is the chairman of that Council. It was not a matter I could decide.

Q. What other connection had you with the matter than that when you received the telegram you sent it to Dr. Follansbee?

A. I can't recall whether we had other communications relating to this particular matter or not, but in so far as I can now recall it was probably the first communication we received in connection with the matter pertaining to the membership of Dr. Selders in the Harris County Society and the situation which had developed in Washington.

Q. What other official connection did you take with regard to this matter than to forward this telegram as you have testified?

A. My recollection is that I notified Dr. Talley that the matter had been disposed of.

Q. Do you recall now of having personally done anything further in connection with the matter than what you have told us?

A. I have no recollection of anything other than to transmit any communications which the Judicial Council might

have directed me to send to the Harris County Medical Society.

Gov. Ex. 125 is my reply to Gov. Ex. 122 and it is dated April 21, 1938. Gov. Ex. 147 is a letter which I sent to Dr. Follansbee on April 21, 1938.

Defense counsel read Gov. Ex. 147 to the jury as follows:

"I am enclosing a telegram received this morning from Dr. A. T. Talley, Chairman of the Board of Censors, Harris County Medical Society, Houston, Texas. Doctor Talley has been informed that this telegram has been referred to you as Chairman of the Judicial Council.

"As I understand the matter, Dr. Raymond E. Selders, a member of the Harris County Medical Society, accepted a position with the Group Health Association, Inc. in Washington, D. C., a corporation now engaged in the practice of medicine in the District of Columbia. You may recall that this corporation was financed by the Home Loan Bank Board through the Home Owners Loan Corporation and that this action was rather severely criticized by an official committee of Congress.

"We were definitely informed that the United States District Attorney for the District of Columbia has ruled that the Home Loan Bank Board had no legal authority for providing funds for the support of the Group Health Association, Inc., that official rulings have been issued by duly constituted authorities in Washington to the effect that corporations can not legally engage in the practice of medicine, and that the Group Health Association, Inc., is operating in violation of the insurance laws of the District of Columbia.

"The Medical Society of the District of Columbia has, as I understand it, expelled one member who accepted employment with the Group Health Association, Inc., and this action has created a great storm in Washington, which has been widely and persistently heralded in the local press. As stated in Doctor Talley's telegram, charges have been preferred against Doctor Selders, a member of the Harris County Medical Society, and apparently the board of censors of that society is undecided as to what should be done. It seems to me that the first thing the board of censors should do is to take the matter up with the council of the State Medical Association of Texas, but apparently the members of the board of censors feel that, as Doctor Selders

is acting as an agent of the Group Health Association, Inc., outside of Texas, the matter is one for determination by the Judicial Council of the American Medical Association.

"Very sincerely yours,"

Gov. Ex. 148 was received by me and is in reply to Gov. Ex. 147.

Defense counsel read Gov. Ex. 148 to the jury as follows:

"April 27, 1938.

DEAR DR. WEST:

Acknowledging receipt of yours of April 21st concerning the situation of Dr. Raymond E. Selders and the Harris County Medical Society of Texas.

The telegram of A. T. Talley, Chairman of the Board of Censors, Harris County Medical Society, asking for an official opinion and ruling by the Council, is a rather mixed-up situation, on which I would not express an opinion without further information. Upon receipt of your letter of April 21st I immediately wired Dr. Talley as follows:

'Is Selders in good standing in County Society? Has by-law procedure been strictly followed? Send air mail constitution and by-laws county and state.'

Up to this afternoon I have received no reply whatsoever. There would be a question in my mind of the jurisdiction of the Harris County Society to the extent of expelling a man for actions occurring so far away from the County Society as to be difficult of proof and also difficult to permit a defense by the accused. The statement in the telegram that the County Society would put this entire matter up to the Judicial Council of the American Medical Association as a primary organization for action, I believe is not provided for in our constitution except on investigation of the circumstances by the Judicial Council and request by them for action by the president. The telegram also says that the trial comes up on the 27th of this month, which is today. It seems strange to me that they should go so far as to be up against the actual trial of the man before they come to the Judicial Council for advice. It looks to me like a very precipitated action, a situation in which I am not satisfied to place the Judicial Council in any position where just criticism can be brought before them. I have not replied to Dr. Talley's telegram and will not until I receive further word from him.

✓ If you have any further information or any suggestions on this case I shall be pleased to receive them.

Sincerely yours, Geo. Edw. Follansbee, Chairman."

I received Gov. Ex. 127. It is addressed to the Judicial Council, attention of Dr. Olin West, secretary. I think I forwarded this to the Judicial Council.

Defense counsel read Gov. Ex. 127 to the jury as follows:

It is dated May 1, 1938. It is on the official letterhead of the Harris County Medical Society, of Houston, Texas. It is directed to the Judicial Council, and then underscored at the top "Attention of Dr. Olin West, Secretary."

"GENTLEMEN:

"The Harris County Medical Society met in executive session, April 27th, and passed the following resolution concerning the case of Dr. Raymond E. Selders' contract with the Group Health Association, Incorporated, 1328 Eye Street, N. W. Washington, D. C.

Dr. Raymond E. Selders, a member of our Society, was indicted by the Board of Censors for unethical practice upon a complaint from the District of Columbia Society, through Dr. Holman Taylor, Secretary of the State Medical Association of Texas, that he had accepted a position on the surgical staff to do contract practice for a group health association, made up of federal employees of the H.O.L.C. in Washington, D. C.

'Since reading the indictment to the Society at the March Business Meeting, the Board of Censors had had an opportunity to study the By-Laws of the American Medical Association in reference to this matter and we find in Chapter IX, Section 1, pertaining to duties of standing committees and councils words which according to our interpretation, mean that in any controversy between the District of Columbia and Dr. Selders, who is a member of the State Medical Association of Texas and constituent associations, should be referred by this Society directly to the Judicial Council of the American Medical Association for adjudication.

'This Board of Censors moves that this be done.'

In accordance with duly passed motion recited above, the Secretary herewith transfers this question of Dr. Selders' contract to the Judicial Council of the American Medical Association for adjudication, and attach herewith a copy of

the By-Laws and Constitution of both the Harris County Medical Society and the Texas State Medical Association.

The Secretary wishes to outline the history of this case and attach such copies of correspondence as will help the Council in this Adjudication:

The first intimation we received concerning this contract was a copy of a letter from Dr. Holman Taylor, addressed to Dr. C. B. Conklin, Secretary of the District of Columbia Medical Society as follows:

'I thank you for your favor of October 30th, in reply to my letter of October 27th, and having to do with the health insurance situation in the District of Columbia, just received.

'I note with interest that a member of the Harris County (Texas) Medical Society is a member of the staff of the institution which is to be set up in Washington as a beginner in "State Medicine"; that, in fact, he will take charge of the surgery in the new set-up, Dr. Raymond Everett Selders.

'Please let me know just as soon as the situation has developed in the District of Columbia to such an extent that charges of unethical conduct may be successfully lodged against Dr. Selders. I will see that the facts in the case are laid before his society. I don't believe the members of that organization will stand for anything of this sort, but even so, they are very fair down there, and rather discriminating. They tend to their knitting like few other organizations of the sort with which I am acquainted. If we will give them the facts, they will act; without the facts, they will hardly do anything about it.

(Signed) Dr. Holman Taylor.'

This letter was read by me to our Society and they voted to refer it to our Board of Censors. Our Board of Censors wrote the following letter to Dr. Taylor:

'The Board of Censors of the Harris County Medical Society in meeting this date have read your letter re Dr. Selders and his alleged association with the "Beginning of State Medicine" in Washington, D. C. We are without any facts in the case and until we have same are powerless to act; Kindly let us have such facts as you may have. Signed by Board of Censors.'

Inquiry was also sent on January 14, 1938, by Dr. A. T. Talley, recently elected Chairman of our Board of Censors.

to the Secretary of the Medical Association of Washington, D. C., and received prompt reply from Dr. C. B. Conklin as follows:

'In reply to your letter of January 14th, 1938, I would state that two members of this society accepted employment; one at \$2,400.00 to take all calls, another at \$4,800.00. The latter resigned from H.O.L.C. after his "trial" before an appropriate committee of the Society for violation of provisions of the Society's Constitution lasted one night. The other continued; his hearing is now completed. It would seem that he will lose his membership.- It must be noted that much praise was given him by the full-time governmental attorneys who represented him.

(Signed) C. B. Conklin, Secretary.'

Inquiry was sent Dr. Holman Taylor regarding the status of this contract and prompt answer was received on February 18th, as follows:

'Replying at once to your letter of inquiry of February 16, with reference to the policies of the State Medical Association as relate to the employment of any of its members by such organizations as the Group Health Association of employees of the HOLC, at Washington, D. C., beg to say that said policy is definitely and directly against anything of the sort. I presume you do not care to have me go into detail and recite the basis of this conclusion. For my part I have personally studied the set-up in Washington referred to here, and it is my personal and official opinion that it is, or was a while back, in direct contravention of the policies of the American Medical Association, and of the State Medical Association, from an ethical point of view. I reiterate in order to make sure that I meet your wishes in this respect.

I am sure you will appreciate that your Councilor, and the Board of Councilors constitute our final authority in all matters of medical ethics. My reply is based entirely upon my duties as Secretary of the State Medical Association, and not in any particular as an authority on the problems of medical ethics.

(Signed) Holman Taylor.'

Inquiry was sent to Dr. Olin West and prompt reply was received on February 24th:

'The Group Health Association, Inc., of Washington, D. C., is, as its title indicates, an incorporated body. The

laws of a number of the states and, as I understand it, the law of the District of Columbia specifically prohibits corporations from engaging in the practice of medicine. My information is to the effect that the United States District Attorney for the District of Columbia and the Corporation Counsel of the District government have both rendered opinions to the effect that Group Health Association, Inc., in conducting the practice of medicine, is operating in violation of the law.

I am informed that the officers of Group Health Association, Inc., maintain that the corporation is not itself engaged in the practice of medicine but that the physicians in its employ, licensed to practice medicine in the District of Columbia, are practicing medicine in accordance with their rights under their licenses. In my opinion, this is, of course, simply an evasion since persons employed by a corporation are the servants of the corporation. I can hardly conceive that the physicians who have accepted employment with Group Health Association, Inc., are ignorant of the fact that they are employees of a corporation engaged in the practice of medicine and that in that capacity they are a party to a violation of the law since, certainly, it is reasonable to suppose that they are informed of all the facts. Based on the information available to us here, it is my purely personal opinion that a physician who becomes an agent of a corporation engaged in the practice of medicine violates the Principles of Medical Rules. This, my personal opinion, is offered of course, for whatever you may consider it to be worth.

I understand that the officers of Group Health Association, Inc., have stated that if the courts decide that the corporation is illegally engaged in the practice of medicine, the enterprise will be organized on a different basis and will proceed with its operation.

(Signed) Olin West.

Based upon the above opinions, on March 9th, 1938, the Board of Censors of the Harris County Medical Society presented the following resolution to the Society:

'The Board of Censors of your Society does hereby formally prefer charges of unethical practice against one of your members, Dr. Raymond E. Selders.

'This indictment charges him with accepting a position on the surgical staff of a group health association, made up

of Federal employees of the Home Owners Loan Corporation, located in Washington, D.C. This type of practice is unethical as judged by Article VII, Section 3 of the American Medical Association's Code of Ethics, in that:

'(1) The compensation is inadequate to secure good medical service.

'(2) It interferes with reasonable competition among the doctors in the City of Washington, D. C.

'(3) It interferes with the free choice of a physician by the patient.

'(4) It is contrary to sound public policy.

(Signed) Board of Censors.

In accordance with the By-Laws and Constitution of our Society the Secretary notified Dr. Raymond E. Selders by registered mail and received his return receipt. He also received Dr. Selders' reply to these charges, copy of which is attached herewith.

On April 21st Dr. A. T. Talley, received the following wire in response to inquiry sent to Dr. Olin West:

'Your telegram has been referred to the Chairman of the Judicial Council.

(Signed) Olin West

On April 23 the following telegram was received by Dr. Talley:

'Is Selders in good standing in County Society. Has By-Law procedure been strictly followed? Send Air Mail constitution and By-Laws County and State.

(Signed) Geo. Edw. Follansbee, Cleveland, Ohio.'

Inasmuch as the trial was set for April there was inadequate time for the Board of Censors to carry out the instructions of the Chairman of the Judicial Council, and inasmuch as the question of jurisdiction was an important one, there seemed to be no other proceeding other than to interrupt the trial with the resolution set forth in the beginning of this letter, and await the adjudication of the Judicial Council.

In reply to the above telegram, Dr. Raymond E. Selders was in good standing when the charges were read March

30th. On April 1st he became delinquent and is now on the rolls of the Harris County Medical Society and the Texas State Medical Society, and may upon payment of his dues within a year be reinstated.

It is my opinion that By-Law procedure both County and State has been strictly followed.

The Harris County Medical Society respectfully requests adjudication on this contract from the Judicial Council of the American Medical Society before proceeding with the trial of Dr. Selders on charges preferred by its Board of Censors.

Sincerely yours, Walter A. Coole, Secretary."

And then this appears:

"cc. Dr. Olin West, Dr. Holman Taylor, Dr. John T. Moore, Dr. A. T. Talley. Minutes Harris County Medical Society."

My recollection is that this matter received official consideration by the Judicial Council, and I think it is quite probable I communicated with the Harris County Medical Society to advise them of any conclusion that may have been reached by the Judicial Council. Gov. Ex. 126 is a letter which I sent to Dr. Walter A. Coole, Secretary, Harris County Medical Society, dated March 5, 1938.

Defense counsel read Gov. Ex. 126 to the jury as follows:

"I have before me a carbon copy of your communication addressed to the Judicial Council of the American Medical Association under date of May 1, which will be referred at once to the Chairman of the Judicial Council.

I infer from a letter which I have received from Doctor Follansbee, Chairman of the Judicial Council, that he has communicated with Dr. A. T. Talley, Chairman of the Board of Censors of Harris County Medical Society. Doctor Follansbee informs me that he asked Doctor Talley to send him a copy of the constitution and by-laws of the Harris County Medical Society and a copy of the constitution and by-laws of the State Medical Association of Texas but that this material has not been received by him. I shall appreciate it very much if you will be good enough to send the copies of the constitutions and by-laws of the Harris County Medical Society and the State Medical Association of Texas to Doctor Follansbee, whose address is

Dr. George Edward Follansbee, 629 Euclid Avenue, Cleveland, Ohio. I shall appreciate it also, if it is not too much trouble, if you will send copies of such constitutions and by-laws to me so that I may have them available for the next meeting of the Judicial Council to be held about June 12.

Very sincerely yours,"

Gov. Ex. 128 is a letter which I wrote on May 5, 1938.

Defense counsel read Gov. Ex. 128 to the jury as follows:

The letter which has just been identified is upon the official letterhead of the American Medical Association, dated as stated, directed over the signature of Dr. West to Dr. George Follansbee, at Cleveland, Ohio.

"DEAR DOCTOR FOLLANSBEE:

"I have been away for a few days and on returning this morning find on my desk your two letters of April 27 to one of which Miss Niehoff has already replied.

"I am enclosing a communication addressed to the Judicial Council which is signed by the secretary of the Harris County Medical Society."

Q. I ask you if the communication addressed to the Judicial Council and signed by the secretary of the Harris County Society is the communication which I just read to the jury, dated May 1, 1938.

A. I presume that it is.

Mr. Leahy:

"It appears that the Harris County Medical Society desires to make the Judicial Council responsible for any action that may be taken with respect to the membership status of Dr. R. E. Selders who, as I am informed, is now a member of the surgical staff of Group Health Association, Inc., of Washington. In so far as I am informed, the Medical Society of the District of Columbia has not taken any definite action with respect to Doctor Selders' membership in the Harris County Medical Society."

Then follows an asterisk, with a note in ink: In whose handwriting is that?

A. Mine.

Mr. Leahy:

"Except as the matter is referred to in the enclosed communication,

"There is, therefore, in so far as I can see, no question to be considered by the Judicial Council unless the Medical Society of the District of Columbia has registered complaint with the State Medical Association of Texas or with the Harris County Medical Society. If that has been done, I have not been informed of it.

"I have written Doctor Coole acknowledging receipt of the communication addressed to the Council and have asked him to send to you a copy of the constitution and by-laws of the Harris County Medical Society and a copy of the constitution and by-laws of the State Medical Association of Texas. I have also asked him to send copies to me so that they will be available at the meeting of the Judicial Council."

I don't think the Judicial Council ever took any action with respect to Dr. Selders' membership. It is my recollection that it was finally decided that it had no jurisdiction of the matter as it then stood. Nothing further was done except to notify the Harris County Medical Society that the Judicial Council had no jurisdiction in the matter as it then stood.

I wrote Gov. Ex. 165 in response to a letter from Dr. Erskine dated September 9, addressed to Dr. Fishbein.

Defense counsel read Gov. Ex. 165 to the jury as follows:

"September 12, 1938.

DEAR DR. ERSKINE:

I have before me a copy of your letter of September 9 addressed to Dr. Fishbein.

I gather from your letter that you do not understand that the Group Health Association in Washington is a corporation engaging in the practice of medicine. Inasmuch as our information has been to the effect that the practice of medicine by a corporation is illegal under the laws of many states and that many court decisions have been handed down declaring the practice of medicine by corporations to be illegal, and because the American Medical Association has opposed illegal practice as well as for other reasons perfectly obvious to those who are familiar with the facts, the American Medical Association has opposed the Group Health Association, Inc. The opposition of the American Medical Association has been based on the policies established by its House of Delegates in which all con-

stituent state medical associations are represented by their own duly elected delegates. Incidentally, there has been a very persistent effort on the part of certain agencies and groups to make it appear that members of the administrative personnel of the American Medical Association has presumed to attempt to define the policies of the Association which, of course, is quite untrue. The officers and members of the official bodies and members of the administrative personnel of the Association have done nothing more nor less than try to comply with official instructions received from the House of Delegates and to maintain and carry out the policies established by that body.

With most cordial good wishes, I am

Very truly yours,"

Q. Is it or is it not a fact that the administrative heads of the American Medical Association have no control over establishing policies of the American Medical Association?

A. It is a fact that they have nothing to do with the establishment of the policies of the American Medical Association. Those policies are established by the House of Delegates.

Q. What jurisdiction have the administrative personnel of the American Medical Association with respect to the policies other than to carry out the directions given by the House of Delegates?

A. Well, it is their simple duty to do what they can to maintain and carry out the policies established by the House of Delegates. It is a fact, of course, that under the constitution and by-laws the board of trustees is empowered to act for the House of Delegates in the interim between meetings of the House, and in certain instances matters have arisen in which action was essential and the board of trustees has been given instructions to the administrative personnel as to what should be done.

I wrote Gov. Ex. 129, dated September 21, 1938, to Dr. Erskine merely in response to his letter of September 9, 1938, to Dr. Fishbein.

Defense counsel read Gov. Ex. 129 to the jury, as follows:

"I have before me your letter of September 9 addressed to Dr. Fishbein to which is attached a copy of a letter addressed to you by Dr. A. H. Woods.

"It seems evident to me that neither you nor Dr. Woods understand the situation that has developed in Washington. In the first place, Group Health Association, Inc., is a corporation engaged in the practice of medicine. The laws of many of the states and of the District of Columbia itself contain provisions declaring practice by corporations to be illegal. While it is true that one of the Judges of the United States District Court for the District of Columbia a trial court, not an appellate court, has handed down a decision declaring Group Health Association, Inc., to be legal, the fact remains that the United States District Attorney for the District of Columbia specifically ruled that Group Health Association, Inc., was a corporation illegally engaged in the practice of medicine, and the Corporation Counsel of the District of Columbia expressed his opinion to the effect that Group Health Association, Inc., was unlawfully engaged in the insurance business. Since the decision of the United States District Court for the District of Columbia a suit has been instigated by individual physicians in Washington seeking a decision from a higher court as to the legality of the activities of the Group Health Association, Inc.

"With respect to the activities of the Department of Justice pertaining to the American Medical Association, I am sure that you will be interested to know that we have never had any communication whatever from the Department of Justice with respect to this matter, although various newspaper statements have been released by an official of the Department of Justice which, designedly or not, have undoubtedly poisoned the public mind against the organized profession in the United States. The timing of these newspaper releases has been a most interesting factor in the situation. The facts about these matters were submitted to the House of Delegates at San Francisco as well as to the House of Delegates at the special session held in Chicago last week, and the officers and members of the administrative personnel of the Association have been given definite instructions by the House of Delegates, which is the policy-making body of the Association.

"The American Medical Association has announced that it has no objection whatever to any fair and reasonably conducted investigation of its affairs by any official agency. As a matter of fact, an agent of the Federal Bureau of Investigation has recently visited the offices of the Association and

has been shown everything that he asked to see. In my opinion it is highly important to remember that the Department of Justice has sent no communication about the matter to the officers of the American Medical Association, nor did it make any effort whatever to ascertain from the Association itself any facts pertaining to the matters referred to in these newspaper releases."

At or about this same time agents of the Federal Bureau of Investigation were in the offices of the AMA and they were at liberty to see anything that was in the files.

I wrote Gov. Ex. 132 to Dr. Erskine, president of the Iowa State Medical Society, on October 8, 1938. It was written merely in response to Dr. Erskine's letter of September 30.

Defense counsel read Gov. Ex. 132 to the jury as follows:

"Your letter of September 30 was received in due time. I do not know how I can convince you that the statements made in my letter are not mistakes, other than to assure you that I know exactly what I said and I know that the situation is as stated.

"The American Medical Association has nothing whatever to do with the expulsion of any member of the Medical Society of the District of Columbia. One member who was expelled has appealed to the Judicial Council of the American Medical Association and his appeal will be heard in due time.

"With reference to the statement at the end of the second paragraph of your letter urging me to make a complete and thorough investigation of the facts with respect to the situation that has developed in Washington, I wonder what you think we have been doing all this time. It is possible that you may be convinced that there was grave question as to the legality of the activities of Group Health Association, Inc., when I tell you that the United States District Attorney for the District of Columbia held that that organization was engaged unlawfully in the practice of medicine, and the Corporation Counsel for the District of Columbia held that it was engaged unlawfully in the business of insurance. The matter came up before the District Court of the United States for the District of Columbia, a trial court, not an appellate court, and Judge Jennings Bailey, one of the judges of the District Court, handed down an opinion to the effect that Group Health Association, Inc., was not

violating either of the laws named, but cited no authority for his decision with respect to the law relating to the practice of medicine. Whereupon three physicians in the District of Columbia, in their individual capacity, have instituted proceedings looking toward a determination as to whether Group Health Association, Inc., is practicing medicine in violation of law, and asking an order to restrain the Association if the court finds that it is.

"I believe that I have already stated to you in previous correspondence that the practice of medicine by corporations is forbidden under the laws of a number of the states and that a very considerable number of decisions, including decisions of Supreme Courts of several states, have declared the practice of medicine by corporations to be illegal.

"We have in our files a copy of the by-laws of Group Health Association, Inc., and have had it for some months. The staff of physicians of that corporation are employees of the corporation and are not employees of individual patients who have paid membership dues in the corporation in the sense that a person is a patient of a private physician. As I understand the matter, physicians in the employ of Group Health Association, Inc., are responsible to the board of directors of the organization and can be hired or discharged at the will of that board. However all this may be, please be assured that I appreciate your interest in writing and I shall be glad to hear from you at any time and to give you such information as I can offer that is available to me.

"With most cordial good wishes, I am

"Very truly yours,"

I wrote Gov. Ex. 133 to Dr. Fred Hammerly on October 12, 1938. The only occasion for writing this was in response to his letter of September 24 addressed to Dr. Fishbein.

Defense counsel read Gov. Ex. 133 to the jury as follows:

"I have before me your letter of September 24 addressed to Dr. Morris Fishbein and referred to me for reply.

"My information is to the effect that Group Health Association, Inc., in Washington, D. C., is a corporation established for the purpose of providing medical service to its members through the instrumentality of an employed group of physicians. I am informed that the Medical Society of the District of Columbia has not approved the plans of that

Association. I am further informed that the United States District Attorney for the District of Columbia held that Group Health Association, Inc., was engaged unlawfully in the practice of medicine, and that the Corporation Counsel for the District of Columbia held that it was engaged unlawfully in the business of insurance.

"It is my understanding that the rulings of the United States District Attorney and of the Corporation Counsel were made the subject of an application to the District Court of the United States for the District of Columbia, a trial court, not an appellate court, for a declaratory judgment and that one of the judges of the District Court held that Group Health Association, Inc., was not violating either of the laws named.

"It is also my understanding that an appeal has been taken from the decision of the judge in the trial court, although I have no authentic information concerning this.

"Very truly yours,"

By Mr. Leahy:

Q. Doctor, in writing this letter to Dr. Hammerly, which I have just read, did you or did you not state truthfully and accurately what information you had with reference to the matters and things about which you wrote?

A. Surely I did.

Q. Have you any independent recollection now of the occasion for writing those facts?

A. My recollection is that in this letter of Dr. Hammerly he asked for information about Group Health Association, and I have a more or less distinct recollection to the effect that he was contemplating possible connection with that organization, and I simply stated to him the facts as I knew them, as I believed I knew them, and I offered him no suggestion whatever, other than to state the facts as I believed I had them.

I wrote Gov. Ex. 149 to Dr. Holman Taylor on November 9, 1938.

Defense counsel read Gov. Ex. 149 to the jury as follows:

"I am very greatly obliged to you for your kindness in sending me a copy of your letter addressed to Dr. Walter A. Coole, Secretary of the Harris County Medical Society, and a copy of the letter addressed to you by Mr. C. T. Freeman. I do not have available a copy of the constitu-

tion and by-laws of the Harris County Medical Society, but, generally speaking, there is a provision in the constitution and by-laws of many component county medical societies that membership in these societies shall be limited to local registered reputable physicians who reside and practice within the counties immediately concerned.

"It is my understanding that the gentleman referred to in the correspondence which you sent me is not engaged in practice in Harris County, but that he is actually engaged in the service of a corporation in a jurisdiction entirely outside of the State of Texas.

"The by-laws of the American Medical Association specifically provide that—

"‘A member of a constituent association who removes to and engages in the practice of medicine at a location in another state in which there is a constituent association shall forfeit his membership in this Association and the secretary shall remove his name from the roster of the members of the American Medical Association unless within one year after such change of residence he becomes a member of the constituent association in the state to which he has moved.’

"With most cordial good wishes, I am"—

By Mr. Leahy:

Q. Doctor, have you any independent recollection of the occasion for writing the letter which I have just read?

A. Well, apparently I had received from Dr. Holman Taylor a copy of a letter which he had addressed to Dr. Coole, Secretary of the Harris County Medical Society, and a copy of a letter addressed to Dr. Taylor by Mr. C. T. Freeman, and this letter was written in reply to those communications, in so far as it applies; and it does apply.

Q. Do you recall now whether or not the letters to which this was a reply called for information or something of that character?

A. I think they must have done so, since I quote the by-laws of the Association with respect to membership in a constituent association after a certain period of time, as it relates to membership in the American Medical Association.

Q. Doctor, can you tell us now whether or not your connection with or relation to Group Health Association is

pretty well indicated by these letters which we have just asked you about?

A. I am not sure that I understand your question.

Q. Can you recall now whether or not you performed any other acts or did anything else concerning Group Health Association other than what has already been brought to your attention?

A. No; I cannot, other than as I have testified on this stand.

Q. I mean, in general, from reading all of these letters. If you can, would you kindly indicate anything which may have escaped my attention in trying to refresh your recollection? If there was any act done or statement made to anyone on any occasion with reference to G. H. A., if you can recall it, will you kindly state it?

A. All I can say in reply to that question, Mr. Leahy, as I have already stated, is that what I did was concerned with the collection of facts for the purpose of publishing the facts, and of course these letters speak for themselves.

I never combined or conspired with anyone for the purpose of restraining trade in the District of Columbia. I never conspired for the purpose of restraining Group Health in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk-sharing prepayment basis. I never conspired for the purpose of restraining the members of Group Health in obtaining, by cooperative efforts, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a prepayment basis. I never conspired for the purpose of restraining the doctors serving on the medical staff of Group Health in the pursuit of their callings. I never conspired for the purpose of restraining doctors (not on the medical staff of Group Health) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their calling. I never conspired for the purpose of restraining the Washington hospitals in the business of operating such hospitals. I had no information as to what was being done with regard to the Washington hospitals during the period from January 1, 1937, to December 20, 1938.

Q. You will recall that on yesterday afternoon, in looking at the abstract of the minutes of the meeting of November

6 in Chicago (Gov. Ex. 117), you stated that the abstract did not correctly quote you as to what in accordance with your best recollection you stated with regard to a question put to you therein by Dr. Hooe to the effect—

“Do you not think it is reasonable for the Washington hospitals to agree with the opinion which Dr. Hooe then expressed”——

Q. Do you recall to what I refer, Doctor?

A. Yes, sir.

Q. Did you or did you not, when that statement was made, have any reference to agreeing with Dr. Hooe or Dr. McGovern or anybody else in that conference to restrain Washington hospitals?

A. Never in the world. I think even that statement that is attributed to me indicates that I clearly felt that the hospitals had the right and the duty to choose their own staffs.

Q. I want to ask you, Doctor, whether under these rules—and these rules refer to the principles of medical ethics of the American Medical Association—so interpreted, that is, as interpreted and applied by the American Medical Association and its affiliated and constituent and component societies, that the defendant American Medical Association and its affiliated constituent and component societies can and frequently do condemn as unethical group medical practice on a risk-sharing prepayment basis principally because such practice is in business competition with and threatens the income of doctors engaged in practice on a fee-for-service basis, and particularly doctors so practicing who are members of the defendant American Medical Association and its affiliated constituent and component societies.

A. I deny that statement absolutely. There is no such purpose in the mind of the American Medical Association.

Q. Doctor, in the declaration or interpretation of Principles of Medical Ethics by the American Medical Association and its affiliated constituent and component societies does it, in that interpretation, take into consideration that risk-sharing prepayment group medical practice threatens the income of doctors engaged in practice on a fee-for-service basis?

A. Well, I think it is true that in some instances they have threatened the income, but that is not the purpose of

the American Medical Association in opposing such plans as it has opposed.

Q. Is the opposition of the American Medical Association to schemes of group practice, prepayment or otherwise, based upon any competition in dollars and cents between the members of the American Medical Association and those groups?

A. If it is, I have never heard of it, sir.

Q. What is the basis of the opposition of the American Medical Association to those group plans?

A. The basis of the opposition of the American Medical Association to such schemes as it has opposed has been due in practically all instances to the unsoundness of the plan—

The Court said that had been gone into yesterday and counsel said he did not want to repeat.

Q. Could you tell us, please, to clear up a point that seems to be a bit obscure in our minds just how are the principles of ethics of the American Medical Association controlling, if they are, on constituent or component societies?

A. I think it is true, Mr. Leahy, that every constituent state and territorial association, with one exception, has fully adopted the principles of medical ethics of the American Medical Association as the principles of medical ethics of its own, and I think it is true that in practically every instance component county societies of the constituent associations have likewise adopted the principles of medical ethics of the American Medical Association.

Q. Will you tell us whether such adoption is voluntary or obligatory?

A. So far as I know, sir, it is voluntary. There is one state association that has its own code of ethics. However, it is quite similar to the principles of medical ethics of the American Medical Association. I have recently been informed by one of its most active members who has occupied an official position, that it also observes the principles of medical ethics of the American Medical Association. That is the Medical Society of the State of New York, so that you may know definitely what it is.

Q. Doctor, do you consider that the principles of medical ethics are reasonable regulations of professional conduct in the practice of medicine?

A. I consider them to be so, yes."

Cross-examination.

By Mr. Kelleher:

Gov. Ex. 658 is a copy of a section of the minutes of the Board of Trustees meeting for September 15-17, 1938.

Gov. Ex. 658 was offered in evidence. Defendants objected on the ground that these minutes were incompetent, immaterial and irrelevant, and were not admissible as no conspiracy involving the AMA has been proven. Objection overruled and exception noted. Gov. Ex. 658 was received in evidence and read to the jury as follows:

"Representatives of the Medical Society of the District of Columbia. The representatives of the Medical Society of the District of Columbia came before the Board and presented information relative to the situation in Washington. No action was taken."

I presume that the reference to "the situation in Washington, D. C." was to Group Health. I presented the facts concerning Group Health to the Secretaries and Editors Conference in a very general way. Dr. Fishbein attends if he is in Chicago.

Q. Do you recall that a stenographic report of the meeting of the Secretaries' Conference in 1937 was kept?

A. I think there was a stenographic statement of the Conference.

Q. Now, Dr. West, as I understand your testimony, it is that the principles of medical ethics, a copy of which I have in my hand, have been adopted by every state society in the country except one, is binding upon the society and its members?

A. I think I said that is true.

Q. And I believe you also testified that every constituent society or component society rather, has done likewise?

A. I think that is true; practically all of them.

Q. And isn't it true also that every member of the American Medical Association is bound by these principles of ethics?

A. Yes, supposed to be.

Q. And isn't it also true that any member and every member of the American Medical Association, and the American Medical Association expects that the component

or constituent societies will discipline members of the American Medical Association who violate these principles of ethics?

A. It is expected that they do so if they think it is justified.

Q. But if there is a violation of the principles of ethics, medical ethics, the American Medical Association expects its constituent or component societies to institute disciplinary proceedings for such violation, does it not?

A. It expects the component state and county societies to do what ought to be done.

Q. But isn't it true that the American Medical Association expects the local societies to enforce these principles of medical ethics?

A. It is so provided in the constitution and by-laws of the societies themselves, to a certain degree at least.

Q. And doesn't the American Medical Association expect the societies to do that?

A. The American Medical Association brings no compulsion—

Q. I am not asking you that; I am asking you whether the American Medical Association doesn't expect its societies, component and constituents, to enforce the principles of medical ethics.

A. In so far as they should be enforced I should say so, yes, in a way.

Q. I think it is true, is it not, that whenever you offered any advice in these letters which you wrote, and which Mr. Leahy went over with you this morning and yesterday, you wrote consistently with the policy of the American Medical Association.

A. I wrote consistently with what I understood to be the policy of the American Medical Association, yes.

Q. And the same thing is true as to what you did in relation to Group Health Association?

A. Yes.

Q. Now you testified yesterday that the Judicial Council of the American Medical Association had jurisdiction only to pass upon matters of law and procedure, is that true?

A. In appeals.

Q. In appeals, yes.

A. Yes.

Q. Isn't it true also that the Judicial Council also has jurisdiction over all matters of ethics?

A. The by-laws, if you will get me a copy—I have a copy if you will permit me to read it. Here it is in the by-laws. Can I read from this copy?

Q. What page are you on? Page 22, I believe, is the section that is relevant.

A. This is Chapter IX of the by-laws, Section I.

"Duties of Standing Committee or Councils.

"Section 1. The Judicial Council. The judicial power of the Association shall be vested in the Judicial Council, whose decision shall be final. This power shall extend to and include:

"(1) All questions involving fellowship in scientific assembly or the obligations, rights and privileges of fellowship.

"(2) All controversies arising under this constitution and by-laws, and under the principles of medical ethics, to which the American Medical Association is a party; and

"(3) (a) Between two or more recognized constituent associations, **(b)** between a constituent association and a component society or societies of another constituent association or associations or a member or members of another constituent association or other constituent associations and—"

The Court: Doctor, the question is merely as to the jurisdiction of the Council as to medical ethics. I think he has read that.

Mr. Kelleher: Which is in the second complete paragraph on page 22.

The Witness: There is another section, I presume, that is admissible under your question which says:

"The Judicial Council shall have jurisdiction on all questions of ethics, and in the interpretation of the laws of the organization."

By Mr. Kelleher:

Q. Yes, so that it is true, is it not, that the question of whether any particular act as found to have been done by a local society violates the principles of medical ethics—ulti-

mately depends upon the Judicial Council of the American Medical Association?

A. I presume that is true, but I have never known in all my experience any times when any questions have been brought before the Judicial Council—probably one or two exceptions—of the nature or kind implied in your question.

Q. It is true, however, when you say that the Judicial Council passes on legal questions only, that it does pass—

A. On appeals.

Q. Yes, on appeals, that part of the legal question is the question of whether a given state of facts violates the principles of medical ethics of the American Medical Association?

A. Well, I offer it as my opinion that the Judicial Council may find it necessary to hear statements concerning what is involved in an appeal in order that it may determine whether or not the procedure was properly taken.

Q. I want to leave the question of procedure out of it. Suppose, taking the Ross-Loos case, suppose the American Medical Association had found that Doctors Ross and Loos had received a fair hearing by the County Society in California, and the State Society, wouldn't it have then been necessary for the Judicial Council to determine whether the conduct of those doctors, Ross and Loos, violated the principles of medical ethics of the American Medical Association?

A. I think that would depend altogether on the nature of the appeal, the question involved.

Q. I understand. Suppose the appeal was such that it would be possible for the Judicial Council to pass on the question as to whether or not these principles of medical ethics had been violated; wouldn't it do so?

A. If it was required in passing on the appeal to do so, I assume the Council would.

Q. And as a matter of fact in the Baird case, known as the Texas Street Railway case, the Judicial Council thought the conduct of these Texas doctors violated the principle of medical ethics of the American Medical Association and—

Mr. Leahy: I object; the opinion speaks for itself.

The Court: If the opinion is here, let's have it.

Mr. Kelleher: I am not going to read the opinion; I just want to point something out to the witness.

The Court: Is there anything, any evidence in the record concerning that case?

Mr. Kelleher: The opinion is in.

Mr. Leahy: No evidence.

Mr. Kelleher: The opinion, it is in evidence.

The Court: That is what I refer to. You might call his attention to some particular paragraph if you desire.

By Mr. Kelleher:

Q. Isn't it true that the Judicial Council in the decision contained in Exhibit 144, held that the plan of the Texas doctors was contrary to sound public policy and therefore violated the principles of ethics of the American Medical Association?

A. I haven't seen this that I can recall in a long, long time.

Q. Mr. Leahy showed it to you yesterday.

Mr. Leahy: Is that away back in 1932?

The Witness: 1932, yes.

Q. Will you answer my question now, didn't the Judicial Council conclude that the conduct of the Texas doctors involved in this case, the opinion of which is contained in Exhibit 144: Didn't the Judicial Council conclude that the conduct was unethical, because contrary to sound public policy?

Mr. Leahy: I submit it speaks for itself.

Mr. Kelleher: I am cross-examining him on his statement yesterday that the Judicial Council passed only on questions of law and procedure.

Mr. Leahy: It still speaks for itself.

The Court: Yes, it does, but I don't intend to have it all read.

Mr. Leahy: He is asking for an opinion as to what the document holds.

The Court: The question was whether the Council in that case put their decision upon the construction of medical ethics. He can answer that; he has the decision before him.

The Witness: That decision, as I read it, contains a statement to the effect that "the Judicial Council is of the unanimous opinion that this type of contract is unethical on the basis of being contrary to sound public policy".

By Mr. Kelleher:

Q. So in that case, the Judicial Council did pass upon the ethics of these particular doctors.

The Court: That is argumentative.

By Mr. Kelleher:

Q. All right, your Honor. Isn't it true that the Judicial Council is the final authority on the interpretation of the principles of legal-medical ethics as pronounced by the House of Delegates? If there has been an appeal from findings and decision of a local society, that is true, isn't it?

A. It is so stated in the by-laws which are read to you.

Q. That is correct.

A. That is what the by-laws say.

Q. So that if, as a matter of fact, the principles of medical ethics, as interpreted by the Judicial Council prohibited, as unethical conduct; group practice on a prepayment basis, isn't it true that the Judicial Council would finally pass upon such matters?

Mr. Leahy: Objected to as argumentative.

The Court: It is quite argumentative.

By Mr. Kelleher:

Q. All right, your Honor, I will come to something more concrete. Yesterday, I believe you testified that there was no general policy of opposition to group practice on the part of A. M. A., is that true?

A. I did.

Q. And group practice doesn't necessarily involve prepayment, does it?

A. No.

Q. There may be a group of doctors associating themselves together to supply medical care on a fee-for-service basis?

A. That is correct, and I understand that there are plans for providing medical service that are not even prepayment plans.

Q. I am now addressing your mind to group practice on a fee-for-service basis.

A. There are a number of such plans.

Q. And so long as the doctors in those plans conform to the principles of medical ethics, of course, the A. M. A. has no policy of opposition toward such plans?

A. The A. M. A.—as I testified yesterday—adopted at Cleveland

Q. I don't mean to interrupt you, Doctor: I now would like to find out, break down this group practice.

A. I think the matter of professional ethics would be involved, yes.

Q. But so long as the doctors were engaged in group practice on a fee-for-service basis, and so long as those doctors are otherwise ethical, the A. M. A. doesn't oppose such plans?

A. It doesn't oppose them unless they should be convinced by an investigation of the facts that the quality of services rendered is of an unworthy or unsatisfactory nature. That is covered by the rules and principles of ethics.

Q. But so long as the quality of care is adequate, and the doctors are ethical, there is no opposition to group practice on a fee-for-service basis?

A. No.

Q. Isn't it also true that within the last two years medical societies have sponsored prepayment plans which are approved by the American Medical Association?

A. Absolutely, and that is why those principles were adopted at the Cleveland session.

Q. And so long as those plans, those prepayment plans, are sponsored by societies and permit all members of the society to participate, they conform with the standards of the American Medical Association?

A. If they are established after an investigation of the needs for such plans, and if they conform to the ten principles adopted by the House of Delegates for the guidance of such societies, why they are; and there is no objection; they are understood to be experimental.

Q. And those prepayment plans sponsored by the local societies, to which the American Medical Association voices no opposition, do not involve group practice, do they?

A. That would depend on the interpretation of group practice. They do not involve group practice in the general acceptance of the term.

Q. As a matter of fact in those plans every member of the society who so desires may participate?

A. Yes.

Q. I now want to address your mind to group practice on a prepayment basis. I think it is true, is it not, that

the Ross-Loos Clinic in Los Angeles is engaged in group practice on a prepayment basis?

A. It is engaged in operating a medical service plan on a prepayment basis.

Q. But doesn't it involve group practice?

A. That organization was originally engaged in group practice as other physicians have been engaged in group practice, and then they altered their procedure by adopting a plan whereby contracts for medical services were sold.

Q. But I am now trying to address your mind to the relationship of the staff: Is that not group practice?

A. It is group practice in the sense they have a number of physicians who are in the organization.

Q. And they have physicians for the various specialties and general practitioners, isn't that true?

A. I don't know how many specialties are represented; I think they do have some specialists.

Q. And within the common acceptance of the term they are engaged in group practice, are they not?

A. They are engaged in the operation of a medical service plan.

Q. Isn't it group practice?

A. It wouldn't be in the general acceptance as applied to physicians who are not selling contracts.

Q. Is it your testimony that the only thing which is group practice within the general acceptance of the term is practiced by a group on a fee-for-service basis?

A. The general acceptance of group practice is where a group of practicing physicians grouped together for the purpose of improving their own services and do not sell contracts; and those groups who engage in and operate a plan for medical services under contracts are usually called medical service plans.

Q. So that your testimony yesterday that there was no opposition by the American Medical Association to group practice had no reference to plans which involve a group of doctors who sold their services on a contract basis?

A. No, there are such plans as that.

Q. I want to know whether your testimony yesterday that the American Medical Association didn't oppose group practice was addressed to plans of this kind; those plans, involving prepayment, by a group of doctors who contract to supply the services to a group of individuals?

A. I can probably answer your question better by telling you that there are plans, medical service plans—consumer if you prefer—that are in operation today that have been approved and have never been objected to, in so far as I have knowledge, operated by societies in the counties in which they are located; and I can name some of them if you want me to.

Q. I want to know whether your testimony yesterday that the American Medical Association had no policy of opposition to group practice, whether that testimony was intended to apply to plans like the Ross-Loos Clinic, and plans like Group Health.

A. It would depend entirely on whether they came within the principles adopted by the House of Delegates and principles of ethics.

Q. Of course, that is the ultimate criterion. Now, isn't it true that the American Medical Association doesn't believe that plans like the Ross-Loos Clinic, like Group Health Association, do not fall within the principles of medical ethics of the American Medical Association?

A. I don't believe I can safely answer that question for the American Medical Association, in so far as the Ross-Loos is concerned.

Q. I want your testimony as general manager, then.

A. My own opinion is, as I have stated in the letters presented yesterday, that there is danger in such plans, in many of such plans.

Q. And don't you feel that such plans as the Ross-Loos Clinic are unethical because contrary to sound public policy?

A. Mr. Kelleher, I wouldn't say what my opinion about that is today, because I don't know what their procedure is now, but there was a time when I didn't hesitate to say that I thought they were unethical.

Q. About 1936?

A. I can't tell you about that.

Q. But at some time between 1930 and 1941, you did consider it unethical?

A. Yes.

Q. Even though its quality of medical care was good?

A. At that time I didn't believe the quality of medical care which was being furnished was good.

Q. Didn't you believe the quality of medical care was good in 1936, as supplied by the Ross-Loos Clinic?

A. I think; I have no faculty for remembering dates.

Q. Let me see if I can refresh you.

A. I think there was a letter in which I expressed the opinion on the basis of information then before me that the services rendered by that particular group was good service.

Q. That was in your correspondence with Dr. Freiberg?

Mr. Leahy: What exhibit is that?

Mr. Kelleher: 141, addressed to Dr. Freiberg.

"I am informed that Doctors Ross and Loos are thoroughly competent physicians and that they have associated with them young men who are well qualified. I have heard from various sources that the Ross-Loos Clinic actually delivers good medical service."

You wrote that letter?

A. Yes, and I stand squarely behind it.

Q. And that was on February 6, 1936?

A. Yes, that was the information that I had at that time.

Q. And at that time didn't you still consider it was nevertheless unethical because contrary to sound public policy?

A. I don't think I expressed any opinion as to the ethics of the thing since that time. If I knew what the Ross Loos people were doing; how they were operating at this time I could tell you—

Q. I am talking about 1936. Didn't you at that time advise Dr. Freiberg that you considered that the Ross-Loos Clinic was unethical, as being opposed to sound public policy?

Mr. Leahy: I object, if it is the letter show him the letter.

Mr. Lewin: He has the letter.

The Court: Point out the part to him.

The Witness: There isn't a word in that paragraph about the Ross-Loos Clinic, sir, that I can see.

• By Mr. Kelleher:

Q. Isn't there a reference to the Ross-Loos Clinic in the second paragraph?

A. That is not the paragraph you directed my attention to.

Q. All right, read the second paragraph then.

A. I stated in this letter that while I had frequently heard that the clinic mentioned—and somebody has written in there "Ross-Loos".

Q. Whose handwriting is that; isn't that your secretary?

A. Not that I know of.

Q. Well, you were talking about the Ross-Loos Clinic, were you not?

A. I couldn't tell you that unless I had the whole correspondence.

Q. Well, here it is (handing document to the witness).

A. Here is a letter of February 6, 1936, I wrote to Dr. Freiberg. (Gov. Ex. 141.)

Q. In that letter didn't you discuss the Ross-Loos Clinic?

A. Yes, the Ross-Loos Clinic is mentioned.

Q. That was February 6, 1936, and in March, didn't you hear from Dr. Freiberg that a doctor in Cincinnati, Ohio, was considering starting a clinic like the Ross-Loos Clinic, and that the Cincinnati Academy of Medicine had decided that such a plan was unethical.

A. I had some telephone conversations with Dr. Freiberg, and then he came to my office at that time and told me of the nature of the clinic that Dr. Cook was preparing to establish in Cincinnati.

Q. It was a clinic like the Ross-Loos?

A. In part, but we had discussed it at some length.

Q. Do you refer to anything else in this letter; do you say anything about it being different from the Ross-Loos?

A. I had in mind when I wrote to him what he had told me on the telephone.

Q. And that doesn't appear in the letter?

A. There was a mention of the Ross-Loos.

Q. In Exhibit 141, dated February 6, 1936, you make the statement that the doctors in the Ross-Loos Clinic are thoroughly competent; that they have associated with them young men who are well qualified, and that the Ross-Loos Clinic delivers good medical service. You said that, did you not?

The Court: He answered that.

The Witness: That was my understanding at the time.

By Mr. Kelleher:

Q. And then on March 18, 1936, if you had learned from Dr. Freiberg, that the Cincinnati Academy had adopted a resolution that a plan like the Ross-Loos Clinic to be started in Cincinnati was unethical, you wrote him again

on March 18, 1936. (Gov. Ex. 143.) That is the letter you just read, isn't it?

A. Let me see that. Yes, I wrote him again, and I stated—if you will permit me to read it, that I was glad to have the information submitted in his letter.

"I sincerely hope, of course, that the Cincinnati Academy will be able to head off the establishment of all sorts of group schemes of the nature referred to in your letter, because I am quite convinced that these schemes do not operate to the advantage of medicine, or the medical profession, or the public. I do believe that they are opposed to public policy."

That statement was based in part on personal statements made to me by Dr. Freiberg at the time of his visit to my office.

Q. You say in the letter "Clinics of the kind described in your letter".

A. Yes, it was described in that letter.

Q. And didn't he say: "It may be known to you that Dr. Geo. H. Cook has been and is trying to organize a group clinic in Cincinnati on the identical plan of the Ross-Loos?"

A. He said that in the letter, but he told me other things personally.

Q. So that there were other things mentioned which you did not incorporate in your letter?

A. No, nor he didn't say anything about them in his letter.

Q. He didn't mention it in his letter and you didn't in yours?

A. No.

Q. Now, isn't it true that in 1935 the American Medical Association adopted these ten principles—

A. I think it was 1934.

Q. Well, 1934,—to govern prepayment plans?

A. I didn't say to govern; they were principles believed to be useful for the guidance of those societies who wanted to start prepayment plans.

Q. Isn't it also true that the principles that were adopted were to control, govern, all types of experimentation to provide medical care for persons in the low-income group?

A. They were not to control anybody.

Q. Were they designed to govern such plans?

A. They were designed for the guidance of those who wished to start such plan. The American Medical Association has never controlled anything. The state and county societies which have started these plans, sponsored them, have controlled them.

Q. Do you recall a report of the Board of Trustees at the special session of 1935? (Gov. Ex. 606.)

A. I recall that there was a special session; I believe in 1935.

Q. In that report the following appeared, and I am referring to the last paragraph. *L*

A. Let me see it. Yes, the word "govern" is used there, but it is not used in the sense of establishing control by the American Medical Association.

Q. But the idea of the principle as adopted is that any prepayment plan should conform with the ten principles announced as of that date?

A. It was hoped that they would, but I insist that the word "govern" there is not used in the manner of establishing control by the American Medical Association.

Q. But the Board of Trustees has said that these ten principles do govern such experiments?

A. It says that these principles did govern, but it is intended not in the sense in which you imply it.

Q. Now, at least, I think you testified it was the intention of the House of Delegates on the whole that the plans would conform with these principles laid down in 1934.

A. I think it was the intention of the House of Delegates to adopt principles that would be helpful to state and county medical societies or, for that matter, other groups, in drawing plans for providing medical service for the low-income groups.

Q. And it was hoped all plans would conform with these principles?

A. I suppose so, certainly; otherwise they wouldn't establish those principles if they didn't think they would be helpful.

Q. And isn't it also true that the sixth principle—I believe it is—requires that any form of medical service should include within its scope all legally qualified doctors in the locality to be served by the plan?

A. I can't recall that.

Q. It is the eighth; I show you on page 55 (Gov. Ex. 8), and ask you whether that is not the eighth principle?

A. It says "Any form of medical service should include within its scope all legally qualified doctors of medicine in the locality covered by its operation who wish to give service under the conditions established."

Q. Yes, isn't it true that that means that any plan that doesn't permit all doctors of the local society to participate, if they desire to do so, violates the ten principles, one of the ten principles, adopted in 1934? (Gov. Ex. 8.)

A. There was one of those principles that was changed.

Q. That was the one on payment?

A. I don't recall.

Q. But you don't recall No. 8 being changed?

A. I can't recall.

Q. It was No. 6?

A. That is my recollection.

The Court: Your question is directed to a specific principle, No. 8. Put another question.

By Mr. Kelleher:

Q. Address your mind to No. 8, and tell us whether if a plan for providing medical service to low-income groups doesn't permit all members of the local society to participate in it, if they desire to do so, that plan doesn't violate one of the ten principles adopted in 1934?

A. I would have to read this whole business through to answer that question satisfactorily. In my opinion Section 8 of these principles expressed the opinion of the House of Delegates that in the formation of these plans by the Society they should include within their scope all legally qualified doctors of medicine in the locality covered by its operation who wish to give service under the conditions established. Now, I would have to read this carefully to—

Q. Well, you are familiar with it, are you not; you saw it yesterday?

A. Mr. Kelleher, I have lots to do; I can't read these every day; and I would have to establish in my mind whether this was intended to apply to these plans believed necessary, and which were to be operated under the auspices of the Medical Society.

Q. Isn't it a fact that the only plan that the American Medical Association would permit were those plans which conformed with the ten principles adopted at that session in 1934?

A. Mr. Kelleher, there are many plans in operation that the American Medical Association would not approve, but it is not a matter of their permission.

Q. Is it not true that you would not approve any plan which did not conform with these principles?

A. I think not; I think they would not be approved by the American Medical Association, but the American Medical Association doesn't have to approve them.

Q. But wouldn't you oppose any plan if it didn't conform with these principles?

A. I don't know that the American Medical Association would condemn it on the basis of being unethical for that reason; it might on the basis of its being an unsound plan. I can tell you this, though: I don't believe the American Medical Association would approve it if it involved control by a corporation.

Q. I am not asking you that. I would now like to know if the American Medical Association would not oppose any plan to provide medical care to people of low-income on a prepayment basis if such plan didn't permit all of the qualified physicians in the locality to be served to participate in the plan?

A. That is a question which would have to be determined on the basis of actual fact.

Q. You are familiar with the various plans which have been adopted within the past few years?

A. I am familiar with some of them.

Q. Some of those plans, like the Ross-Loos Clinic, do not permit all physicians in the locality served by the plan to participate, do they?

A. I don't think they do.

Q. And therefore, isn't it true, that they do not comply with the general principles adopted in 1934 by the Association? (Gov. Ex. 8)

A. That depends entirely on whether those ten principles are for the guidance of the county and state societies who wanted to organize, alone, or generally.

Q. But you weren't setting up standards for state and county societies which were more rigorous than the standards you applied to organizations not sponsored by such state and county societies, were you?

A. That would depend on the circumstances; I think you might reasonably expect, in some particulars, more of a medical society than of other groups.

Q. Suppose you take a plan which involves group practice; that is a group of doctors who associate themselves together; and suppose that the plan offers medical care to people of low income on a prepayment basis. Does that plan conform to the principles of medical ethics of the American Medical Association, assuming that it is ethical in all other respects?

A. You have a long question there. Ask it again and I will try to answer it. Of course, it presupposes that a person who offers medical service is going to render good medical service. I think I know of men who are not particularly capable but who are quite ethical.

Q. I want you to assume that this group offers the same type of service as does the Ross-Loos Clinic.

A. I would say that if that group was approved by the local county medical society and by the state medical association, the American Medical Association would not offer any opposition whatsoever.

Q. Suppose, though, that the local medical society and the state medical society neither approved or disapproved?

Mr. Leahy. What do you want to know?

Mr. Kelleher. I want the answer to my question.

Mr. Lewin. The question is perfectly clear.

The Witness. It is not very clear to me.

Mr. Leahy. I don't know what it is.

By Mr. Kelleher:

Q. I will ask it again. Suppose that a group of doctors offer medical care to low-income groups on a prepayment basis; suppose that the group is ethical in all other respects; suppose the doctors are qualified, and that the medical care offered is the same offered by the Ross-Loos Clinic, and suppose that the local medical society and the state medical society neither approve or disapprove of that plan. Is such a plan ethical?

Mr. Leahy. Objected to as immaterial; a hypothetical question without any hypothesis in the evidence.

The Court. You opened it up; you asked him about his opinion about the principles of ethics of the American Medical Association. Overruled.

Mr. Leahy: Exception, your Honor.

The Witness: I think no objection would be offered to it if it were not otherwise in conflict with the constitution,

by-laws, ethics and traditions of the American Medical Association.

Q. And such a plan would not be unethical, would it, because it didn't permit free choice of physicians?

A. Not necessarily, because the hospitals do not offer free choice of physicians in all particulars; neither do other groups.

Q. And if in that plan the choice of the patient was limited to the doctors on the staff of the organization there would be no infraction of that section of the principles of medical ethics that require free choice of physicians?

A. Providing there was nothing else involved, and providing it was not disapproved or approved by the local society and the state society.

Q. Now, let us get to the second matter; if the local society disapproves of that plan solely because it involves prepayment by a group of doctors, the American Medical Association would oppose the plan, would it not?

A. Not, if I understand your question correctly; the answer is "No"; but I am not sure I understand it.

Q. I will try to clarify it. If the medical society, local society, disapproved of the plan which I have described, and disapproved for the sole reason the plan involved group practice on a prepayment basis, the American Medical Association would also disapprove of it, would it not?

A. The American Medical Association would not take any action unless it was officially brought to its attention, and action on the part of the American Medical Association requested.

Q. Suppose it were officially brought to its attention?

A. There was more to my answer. It was officially brought to the attention and action was requested.

Q. Let us suppose it were officially brought to its attention and action requested.

A. It would be referred to the Judicial Council.

Q. Would not the American Medical Association oppose such a plan for that reason?

A. For what reason?

Q. Because the local society disapproved of the plan.

A. Not necessarily, Mr. Kelleher. The American Medical Association might take no action whatever.

Q. Even if invited in?

A. It might not make any decision in the case that would involve official action.

Q. As a matter of fact, the American Medical Association was invited in, in connection with G. H. A., was it not?

A. The American Medical Association undertook to develop the facts about G. H. A. before it was ever invited to do anything; and G. H. A., if I may say so, is not at all—

Q. Please confine yourself to my question, if you do not mind, Dr. West. The American Medical Association was asked to come into the G. H. A. matter, was it not?

A. The American Medical Association was requested by the District of Columbia Medical Society, through its representatives as a committee, to interest itself in this matter long after it had already interested itself in it.

Q. Is it not also true that Dr. Verbrycke wrote Dr. Woodward and asked the American Medical Association to become interested in the matter?

A. He asked the Bureau of Legal Medicine and Legislation, I believe.

Q. And as a result of that it was decided that Dr. Woodward should go to Washington, was it not?

A. I do not know, to my own knowledge. I cannot answer that definitely, but maybe so.

Q. Did you hear Dr. Woodward's testimony?

A. I have heard lots of testimony. I cannot remember it all.

Q. Do you not recall that he testified that after conferring with you it was decided that he should go to Washington?

A. If he did, that was actually so.

Q. Is it not also true that you were interested in Group Health Association before the Medical Society of the District of Columbia became interested?

A. I think that is true, but I cannot produce any documentary evidence on that.

Q. You think it is true?

A. I think it is true, and I said so, and I believe it.

Q. Whatever you were doing in connection with Group Health Association, you were doing to oppose Group Health Association, were you not?

A. I was doing it to develop the facts.

Q. Yes; but were you not developing the facts and doing everything else—

A. Mr. Kelleher—

Q. Let me finish my question—for the purpose of opposing Group Health Association?

A. It has long been the policy of the organized medical profession of the United States to oppose corporation practice, and this association happened to be a corporation engaged in the practice of medicine.

Q. And therefore, as a matter of fact, you were opposed to it?

A. Personally, I certainly was.

Q. Was not the American Medical Association opposed to it?

A. I think that it is contrary to the policy of the American Medical Association for a corporation to enter into the practice of medicine.

Q. And therefore the American Medical Association and you were opposed to Group Health Association?

A. We were opposed to any corporation engaging in the practice of medicine.

Q. Were you opposed to Group Health Association?

A. When we found out what the facts were, I was.

Q. Was not the American Medical Association opposed to it?

A. I think it was entirely contrary to the policies of the American Medical Association.

Q. And to the policies of the House of Delegates?

A. Yes, sir; I think so.

Q. And whatever you did in connection with G. H. A. you did to oppose the growth of Group Health Association, did you not?

A. I don't know about opposing the growth. I opposed the principle of the Group Health Association.

Q. And did you not desire to put a stop to its operation if you could?

A. I didn't do anything to stop it, but I did make my position known, and I expressed my opinion to the effect that it was a corporation practicing medicine and believed to be illegal, and I opposed it on that account.

Q. Is it not also true that you and the American Medical Association did everything you could to combat G. H. A.?

A. Yes, to combat it in the sense that we did everything we could to develop the facts and make them known. Now, Mr. Kelleher, I never had one word of conversation with anybody in G. H. A. that I know of.

Q. I am not suggesting that at all.

A. I think it is fair for me to say that if I had been going to actively oppose the actual organization of the thing I would have gone to them and opposed it.

Q. How would you have done that?

A. By doing everything I could to persuade them that they were doing the wrong thing.

Q. But there were other ways of opposing it.

A. Yes; and there were other ways to make the attitude of the American Medical Association known.

Q. And it is also true that there were ways of affecting Group Health Association's growth through the local hospitals; is not that a fact?

A. So far as I know, the American Medical Association never attempted to control the action of any hospital with respect to Group Health Association.

Q. Is not this true—

A. (Continuing) I never communicated with a Washington hospital in my life, so far as I know.

Q. In the minutes of the board of trustees of November 18 and 19, 1937 (Gov. Ex. 136), appears the following (reading):

"Dr. West reported that a committee of the Medical Society of the District of Columbia had visited the headquarters offices early in the month for the purpose of conferring with him, Dr. Woodward and Dr. Leland with respect to the Group Health Association, Inc.; that he had brought what apparently amounted to a demand to the Association to devise further means and ways of opposing the continued operation of Group Health Association, Inc., and that it was intimated that the American Medical Association had not concerned itself with anything but scientific matters, in spite of the fact that he and Dr. Woodward had conferred with the District Society in Washington on instructions from the board."

Is it true that in connection with G. H. A. you conferred with the District Society in Washington on instructions from the Board of Trustees of the American Medical Association?

A. I do not recall that I ever attended a meeting of the District Society during all the life of the Group Health Association.

Q. Did you confer with representatives of the Society on instructions from the Board of Trustees?

A. No. I think Dr. Woodward and Dr. Leland conferred on instructions from the Board of Trustees.

Q. Did you not say that you and Dr. Woodward did confer with the District Society on instructions from the Board of Trustees?

A. I don't recall the Board of Trustees giving Dr. Woodward and me any instructions to confer.

Q. Would you say this is wrong?

A. Well, I don't know. I am not going to say it is wrong, but I do say that I don't recall it myself, that specific instructions were issued to Dr. Woodward and me at any one time.

Q. You came here in July, 1937, for the very purpose of consulting the representatives of the Society concerning G. H. A., did you not?

A. I came for that purpose among others, Mr. Kelleher.

Q. If you were ordered by the—

A. As a matter of fact, if you will permit me to answer that question, my recollection is that—and I am not absolutely sure about it—that I was invited to confer with them after I got here. I can't be sure about that, but that is my recollection.

Q. If you said in November, 1937, that you had gone to Washington as a result of instructions from the Board of Trustees, don't you think that was correct?

A. I would have to see the preceding minutes of the Board of Trustees to know if I had had instructions.

Q. You saw them this morning. Do you not recall that you were shown—

A. My dear man, I saw an extract from the minutes this morning, a digest of the minutes. I didn't see all the minutes.

Q. I think you have told us that you and the American Medical Association were opposed to G. H. A., did you not?

A. I said I was opposed to the principle of the thing, and I thought it was not in keeping with the policies of the American Medical Association.

The Court: You have been all over that.

Mr. Kelleher: I was just leading up to something else, your Honor.

By Mr. Kelleher:

Q. Is it not true that the American Medical Association was opposed to G. H. A. because, in its view, G. H. A. was unethical?

A. Mr. Kelleher, I have already stated that the American Medical Association was opposed to G. H. A. because it was a corporation engaged in the practice of medicine, and it was believed to be illegal and it had been so decided in many instances.

Q. And was it not opposed, therefore, because it was unethical for a doctor to associate himself with that association?

A. I will give you my personal opinion. I think it would be unethical for a physician to engage himself with an illegal corporation of any kind.

Q. And you felt that way in 1937?

A. I felt that way all my life.

Q. And you felt that way in 1937 concerning Group Health?

A. I feel that way today.

Q. And you felt that way in 1937?

A. All my life.

Q. Did you not know that if the local society had the same view that you had, that G. H. A. was unethical, that a doctor, a member of the Society, associating himself with G. H. A. would be subject to disciplinary proceedings by the local society?

A. If that local society wanted to institute proceedings, yes. But, Mr. Kelleher, I must insist—and I hope it is not out of the way for me to do so—that the American Medical Association has no jurisdiction over membership of local societies.

The Court: I thought we had been all over that.

The Witness: And it does not attempt to exercise it.

The Court: We have been over that. Do not pursue it any further. I would rather not get back to that.

Mr. Kelleher: All right, your Honor.

By Mr. Kelleher:

Q. Did you not believe in 1937 that any member of the local society who became associated with Group Health Association would be subject to disciplinary proceedings by the Medical Society of the District of Columbia?

Mr. Richardson: Objected to as repetitious.

Mr. Kelleher: No, it is not.

Mr. Richardson: Word for word.

The Court: He has answered the question. Put another question. Objection sustained.

By Mr. Kelleher:

Q. On October 29 you wrote the local society notifying them that Doctors Lee and Scandiffio were on the staff of G. H. A., did you not?

A. I don't know whether it was October 29 or not. I wrote them and told them that I had that information.

Q. You learned that from Mr. Hayes, did you not?

A. My recollection is that either I or somebody at our office received a telegram from Mr. Hayes giving the names of those who had been announced as members of the staff of G. H. A.

Q. And on the same day you wrote a letter (Gov. Ex. 114) to the Society notifying the Society that two of its members were on the staff of G. H. A., did you not?

A. I don't know whether it was the same day or not. I do remember writing a letter in which I stated that two members of the staff were members of the District of Columbia Society, and that one, I believe, was a member and Fellow of the American Medical Association.

Q. And a few days later, at the November 6 conference, you learned that the Society had instituted disciplinary proceedings against Doctors Lee and Scandiffio?

A. I learned—I don't know whether it was a few days later or not, but some time later I learned through a newspaper statement.

Q. Did you not hear about it at this November 6 conference, through Dr. Hooe?

A. I believe it was mentioned; yes.

Q. Dr. Hooe explained that two members had been cited by the C. C. and I. M. committee; do you recall that?

A. I think I probably had information before that conference.

Q. You had heard it before that?

A. I do not know about its being a few days after I wrote that letter.

Q. Were you surprised to hear that these two doctors about whom you had written on October 29 were now cited by the C. C. and I. M. committee?

Mr. Leahy: I object as immaterial, if your Honor please, whether he was surprised or not.

The Court: Objection sustained.

By Mr. Kelleher:

Q. Did you not expect, when you notified the Society on October 29 that two of its members were on the staff of G. H. A., that that Society would institute proceedings against those two doctors?

A. Mr. Kelleher, I didn't notify the Society. I informed the Society that that was the information I had.

Q. And when you so informed the Society did you not believe then that proceedings would be instituted by that society?

A. I didn't think about whether they would be or not. If you are trying to make the implication that I wrote that letter for the purpose of inciting action by the Society, you are altogether wrong.

Q. Why did you give the Society that information?

A. Just as a matter of interest.

Q. Purely casually?

A. If I were to get a telegram announcing that certain doctors had been appointed on any commission by the United States Government, as a matter of interest I would look to see if they were members of the American Medical Association or not.

Q. All right. As a matter of fact, Dr. Scandiffo was expelled from the Society, was he not?

A. So I am informed.

Q. Did you not also, in response to a request from the Harris County Society, advise that Society that in your opinion if any member of that Society were associated with Group Health Association that was unethical conduct?

A. I don't know whether I wrote such a thing or not. If you have a letter there I should be glad to look at it.

Mr. Lewin: It was shown the witness this morning.

The Court: I will give the jury a few minutes recess while you are finding it.

(A brief informal recess was taken, at the conclusion of which the following proceedings took place:)

By Mr. Kelleher:

Q. Doctor West, did not Dr. Talley write you and ask you what the view of the National Association was concerning

the ethics of any member of the Association affiliating himself with G. H. A.?

A. Dr. Talley—who is he?

Q. Chairman of the Board of Censors of the Harris County Medical Society.

A. Here is a letter from him, yes, in which he says:

“We would appreciate a letter from you stating the view held by the National Association with reference to practice of this type.”

Q. And he was referring to Group Health Association, was he not?

The Court: What exhibit is that?

Mr. Kelleher: No. 124, your Honor.

A. Yes. He says, “so-called Group Health Association made up of Federal employees of the H.O.L.C. located in Washington, D. C.”

By Mr. Kelleher:

Q. Did you not reply that that organization constituted a violation of the principles of medical ethics?

A. I will have to read this letter to find out.

Q. Let me help you on it.

The Court: What letter is that?

Mr. Kelleher: No. 123, your Honor.

By Mr. Kelleher:

Q. Read the last two sentences in the third paragraph.

A. (Reading:)

“Based on the information available to us here, it is my purely personal opinion that a physician who becomes an agent of a corporation engaged in the practice of medicine violates the principles of medical ethics. This, my personal opinion, is offered of course for whatever you may consider it to be worth.”

Q. Your opinion, then, as of February, 1938, was that if any doctor affiliated with Group Health Association, he violated the principles of medical ethics?

A. I think if—

Q. Just a second, Doctor West. Please answer my question. I want to be perfectly fair to you.

Mr. Lewin: Let him answer it yes or no and then give his explanation.

Mr. Leahy: Put the question again, if you want yes or no.

The Court: You gentlemen settle it among yourselves.

Mr. Kelleher: Will you read my question, please?

(The pending question was read by the reporter as above recorded.)

By Mr. Kelleher:

Q. What is the answer to that question?

A. My answer is that I think any doctor who sells his services to a corporation engaged in the practice of medicine violates medical ethics.

Q. Then is your answer in the affirmative?

A. As particularly applied to Group Health Association?

Q. Yes.

A. Yes.

Mr. Kelleher: I have no further questions.

Redirect examination:

Q. Doctor, with reference to the Dr. Cooke letter about which you were asked, with reference to the Cincinnati group, did you receive information from Dr. Cooke personally?

A. No, sir; not that I recall.

Q. Did you receive information from anybody with reference to the Dr. Cooke clinic?

A. I had a visit, and my recollection is that I had at least two telephone calls from Dr. Frieburg who later wrote me. I believe perhaps one of those calls was in between the two letters that he wrote me, in which he gave me some information that was not contained in the letters, which, in my opinion, indicated that the proposed plan was not—

The Witness: I did; through a visit from Dr. Frieburg and through, I think, two telephone messages, and I have an indistinct recollection that someone else wrote to me about it or talked to me about it; but that I cannot testify to definitely.

Q. From information of that character received with reference to it, was there a distinction between the Ross-Loos Clinic and the Dr. Cooke clinic as proposed?

A. My recollection is that the plan proposed to be put into operation in Cincinnati went considerably beyond most plans, and I do distinctly recall that I was informed that it would involve solicitation of patients and advertising, open advertising.

Q. Now, with reference to one question and answer—and I am not clear about it—you made the statement that you had been opposed all your life to a doctor's being connected with an illegal enterprise. Do you recall that testimony?

A. I said that I had been opposed all my life, certainly all my medical life, to a doctor selling his services to a corporation engaged in the practice of medicine. I stick to that statement.

Q. With reference to the G. H. A., somewhere in your answer you said something which appeared to be confusing, as to whether you had been opposed to G. H. A. or whether you were opposed to a doctor engaging himself in an enterprise which was thought to be illegal.

A. I was opposed to G. H. A. as a corporation just as I was opposed to any other corporation engaging in the practice of medicine.

Recross-examination:

Q. Were you not opposed to the Ross-Loos Clinic because it was a partnership?

A. No.

Q. You were not?

A. No.

Q. Let me read you this and ask you whether this is correct. It is from Exhibit 141 (reading):

"I am sorry indeed to know that anybody in Cincinnati is preparing to begin operations of a plan made more or less famous, or infamous, according to the point of view, by Doctors Ross and Loos in Los Angeles. I am quite convinced that the Ross-Loos scheme is a violation of the principles laid down by the courts of California which have repeatedly insisted that the corporate practice of medicine is illegal in that state. I am just as strongly convinced that it is relatively easy to evade the law. What is in effect a cor

poration may be organized under the designation of partnership."

Is that correct?

The Witness: That is correct, because at that particular time I had the understanding that it was a corporation. Now, then, the other part of your question there—if you will be good enough to re-state it I will try to answer it.

The Court: The question is whether, if it changed its form to partnership, you would still be opposed to it if it carried on the same way.

The Witness: My view with respect to it, based on the fact that a corporation that had been engaged in the practice of medicine in Illinois had lately been declared to be illegal and immediately got around that court decision by organizing as a partnership—

By Mr. Kelleher:

Q. Will you answer the court's question, please?

The Court: It was not my question.

Mr. Kelleher: Your suggestion, I mean. Will you read it, Mr. Reporter?

(The question referred to was read by the reporter as above recorded.)

The Witness: Not necessarily; no.

By Mr. Kelleher:

Q. Were you opposed to the Ross-Loos Clinic even if it was a partnership?

A. I was at that particular time, when I was informed that it was a corporation.

Q. Does this say you were informed it was a corporation?

A. No; it does not. I cannot put into every letter I write everything I know and all the information I have.

Q. Did you not put into that letter that although the Ross-Loos Clinic was a partnership, you felt it was evading the law?

A. That is not what I said.

Q. Look at that letter and tell us whether there is anything to show that you thought that the Ross-Loos Clinic was a corporation.

A. I said, "I am just as strongly convinced that it is relatively easy to evade the law. What is in effect a corporation may be disguised under the designation of a partnership."

Q. And did you not view the Ross-Loos Clinic as a partnership, but, nevertheless, say it was illegal?

A. No; I didn't think it was illegal as a partnership, because I know of corporations that have been declared illegal and that have established themselves as partnerships and are not declared illegal.

Q. Did you not say, "I am quite convinced that the Ross-Loos Clinic is in violation of the principles laid down by the courts of California"?

A. I objected because I thought it was a corporation. I explained that three times.

Q. You have explained it three times?

A. Yes.

Q. Even though it was a partnership?

A. I don't know what you mean by "even though it was a partnership."

DR. MORRIS FISHBEIN, a defendant and witness for the defendants.

Direct examination.

By Mr. Leahy:

I have resided in Chicago since 1906. I am editor of the Journal of the AMA and managing editor of all its publications. I have a degree of Doctor of Medicine from Rush College of the University of Chicago, conferred in 1912. I was born in 1889. I received the alumni fellowship in pathology from Rush Medical College and was appointed resident physician in the Durand Hospital of the McCormick institution for infectious diseases. I was assistant coroner's physician of Cook County, making post mortem examinations, 1912-1913. I was assistant in the out patient department of the Central Free Dispensary in Chicago for a year. In 1913, I became assistant to the editor of the Journal of the AMA and was appointed editor in 1924. I have been with the AMA for 27 years.

As editor of the Journal I have charge of all material furnished, including the scientific contributions, editorials,

news material, abstract of scientific literature, answers to questions. I take the responsibility for it and am responsible to the Board of Trustees. The Journal is a weekly publication with a circulation of 101,300 subscribers, mostly physicians, although at least 4,000 copies go to libraries, medical schools, institutions of research, and similar places. I have written and published 18 books, some medical and some general advice books; some scientific expositions, some exposures of quackery, and several hundred articles, of which six or seven dealt wholly with scientific research and exposition. I am a member of the American Medical Association for the Advancement of Science, a fellow of the American Public Health Association, a member of the American Medical Historical Association, a fellow of the AMA, a member of the Chicago Pathological Society, of the Chicago Society of Medical History, and many other organizations, including the Committee on Medical Preparedness of the AMA; the Executive Committee of the Federation of Medical Sciences of the National Research Council, and am chairman of the Committee on Education of the National Research Council.

The Journal receives for publication each year 3600 articles that discuss every phase of scientific medicine, including surgery, diseases of the skin and of the nervous system and practically every other disease which may occur to man and sometimes, to animals. We select therefrom approximately 600 as acceptable for publication. Very frequently controversial questions are presented and published from many different points of view, as physicians might vary as to techniques, so we naturally present the various techniques. I understood that Dr. Cabot stated that in so far as the scientific aspects of the Journal were concerned he considered it probably the best in the world. When Dr. Cabot made the statement that some of the articles of the Journal could be torn limb from limb he was referring, I am sure, to specific articles not dealing with the scientific aspects of medical science.

I began to hear vague rumblings concerning something that later turned out to be Group Health fairly early in 1937. Of course, if I started now to go all the way back I would say that I heard the antecedents of Group Health discussed at least twelve years ago by Mr. Filene. I have no definite memory as to exactly when I heard about Group Health. Someone must have said to me early in 1937, "Some

one is figuring on starting another plan in Washington." I attended the AMA convention in June 1937 at Atlantic City and I am quite sure I heard something about Group Health. I left the United States in the middle of July of that year and did not return until the first of September. I met Mr. Filene on the boat and he mentioned the matter at that time. With the exception of this I did not hear any mention of Group Health from July 12 to the first of September.

During the period from the AMA convention to July 12 I heard about Group Health at a meeting of the Executive Committee of the Board of Trustees on June 29. I believe that about that time, at that meeting, there was some discussion of Group Health, and the suggestion was made that an article be published in the Journal giving available facts concerning the organization. Before leaving on July 12 I personally did not do anything whatsoever concerning Group Health, and didn't even discuss it with anyone. I never interviewed anyone in the Medical Society about it and I had no correspondence with anybody in the Society. I never went to any committee of the District Medical Society for discussion on any subject or anything relating to Group Health. As editor of the Journal I have no authority in the administration of any of the bureaus or councils of the AMA. I make no attempt to administer any of the bureaus. Before going to Europe I had no conversation with Dr. Cutter or Dr. Leland concerning Group Health, and with the exception of the Executive Committee meeting none with Dr. West. I have never formulated any plans whatsoever about Group Health. An article pertaining to Group Health came to my desk with a memorandum from Dr. Woodward. I indicated on the memorandum certain changes which I thought desirable and probably returned the article to Dr. Woodward, and beyond that I had nothing whatever to do with the article itself. I have met Dr. Christie, Dr. Groover, Dr. Neill, and I corresponded with Dr. Yater, but I have had no conversation nor correspondence with any of these doctors relating to Group Health. I have not met and know nothing of Dr. Hooe, Dr. Martel, Dr. Mattingly, Dr. McGovern, Dr. Reade, Dr. Sprigg, Dr. Stanton, Dr. Warfield, Dr. Prentiss Willson, or Dr. Young. On November 6 when Drs. Woodward, Leland, and West met with Drs. McGovern and Hooe in Chicago, I was in New Orleans.

Upon my return in September, 1937, and aside from the publication of the Journal article the following is all I had to do with reference to Group Health; I sat with the Board of Trustees at the September meeting previously to the publication of the article; I was present at the meeting of the State Secretaries and Editors; I was probably also present at the meeting of the Board of Trustees in November, 1937. I have a dim recollection that at the meeting of the State Secretaries and Editors there was an exposition of the development of Group Health, and the general character of the matter was discussed. I believe an attempt was made to introduce and pass a resolution, but that body has no authority to pass any resolutions that are binding in any way on anybody. That is purely a conference where men discuss affairs, and they can take no action.

I have no official position on the Board of Trustees, but as editor, and being responsible for all the publications and taking orders from the Board of Trustees as to material that is to be disseminated, I sit with the Board at its meetings.

In addition to the Journal, I edit Hygeia; the quarterly cumulative index medica, an index of some 1500 medical periodicals throughout the world; a periodical devoted to nervous and mental diseases, one for pathology; one for the nose, throat, and eye; internal medicine; surgery; and I am also chief editor of War Medicine, which is published in cooperation with the National Research Council and with the cooperation of the Army and Navy and the Public Health Service.

On February 10 at Georgetown University I made a speech, and at that time some questions were asked about Group Health in an open forum and I gave some discussion of group health in general. I think the title of my address was American Medicine. I venture to say that perhaps in one or two other addresses before public forums elsewhere in the country I may have occasionally devoted three or four sentences in my discussion to Group Health as just one type of maybe several hundred, if not thousands, of plans that are now being experimented with in this country.

I have never conferred with any member of the District Medical Society and never had a conference with anybody in the District Society on the question of Group Health. I never attended any meeting of the Medical Society in 1937

and 1938. In responses to the subpoena of the Government I instructed my secretary to locate every letter from my files which could be found which might be even remotely related to Group Health and turn them over to the Government. So far as I know I answered a letter addressed to me from a boy named Fred Hammerly, which didn't discuss Group Health. He then responded and his second letter was referred to Dr. West. That is the only correspondence of which I have any knowledge which might concern Group Health. My letter to Hammerly, dated September 30, 1931, read as follows (Gov. Ex. 283):

"I am referring your letter of September 24 to Dr. Olin West, secretary of the American Medical Association, who is a member of the Judicial Council and who can best advise you regarding the question in which you are interested."

Q. Doctor, you were here in the courtroom, were you not, when Dr. Cabot gave his testimony?

A. Yes, sir.

Q. With reference to that testimony, I want to ask you, Doctor, whether quite a different policy has been established in regard to the section on Medical Economics in the Journal than that which had existed hitherto?

A. No doubt Dr. Cabot meant to infer by that statement, I take it, that we were not as broad in our general admission of discussions relating to so-called medical economic matters as we are in relation to scientific matters. There might be a fair difference of opinion on that point. In fact, if anyone wished to show that, I could produce a list of many hundreds of articles discussing every possible aspect of the distribution of medical service.

Q. Do you edit all of the articles on economic questions and medical economics that appear in the Journal?

A. I am responsible as editor for every article and, in fact, for everything else that appears in the journal of the American Medical Association.

Q. What have you to say with reference to the statement that the articles in the Journal are a pretty incomplete statement with very important omissions therefrom?

A. That, of course, is to my mind absolutely unwarranted, for the simple reason that I have published many, many articles describing every possible technique in the distribution of medical service.

Q. On questions wherein there is any discussion whatsoever with reference to medical economics, do you omit source material so that the busy physician who cannot possibly go to original sources is not able to get a complete picture?

A. Well, if Dr. Cabot meant by that that I did not publish the 27 volumes of the Committee on the Cost of Medical Care—he may perhaps refer to that as source material—obviously we print vast amounts of source material. I might refer, for instance, to an article printed long before Group Health Association appeared on the scene, dealing with various techniques for distribution of service and on different types of payment.

Q. I want to ask you, Doctor, if the Journal of the American Medical Association has adopted any policy whereby the possibility of pointing out omissions and weaknesses in articles published has been frowned upon?

A. I think when Dr. Cabot made that statement he disregarded the fact that I have published on at least five occasions statements made by Dr. Cabot himself, discussing such matters.

Q. Has the Journal of the American Medical Association in its field of discussion of Medical Economics and such subjects and problems been open to both sides for criticism each of the other?

A. We have published on many occasions criticisms by two sides of various techniques for the distribution of medical service. In that connection it is obviously the duty of an editor always, first of all, to protect his reader, so that if an article is received with obvious misstatements of fact it would be a very poor editor who would publish it just because it came from the opposite side.

I wrote Gov. Ex. 291-A to Mr. Hartfield. I wrote Gov. Ex. 281 in reply to a letter from Dr. Erskine.

Defense counsel read Gov. Ex. 291-A and 281 to the jury as follows:

Gov. Ex. 291-A, dated August 27, 1938, is on the official stationery of the Journal of the American Medical Association, addressed to Mr. M. K. Hartfield, Washington, D. C. (reading):

“DEAR MR. HARTFIELD:

I appreciate your letter of August 23, together with the information that it contains. This is most heartening as

indicating the public reaction in Washington toward Group Health Association activities. I am referring your letter to Dr. Olin West, Secretary of the Association, and Dr. R. G. Leland.

With best wishes and with the hope of seeing you sometime soon, I am

Sincerely yours,"

Exhibit 281 is a carbon copy of a letter from Dr. Fishbein dated September 19, 1938, addressed to Dr. Arthur W. Erskine at Cedar Rapids, Iowa, and it reads as follows (reading):

"I have read with great interest your letter of September 9 and also the material sent to you by A. H. Woods. I am sending your letter also to Dr. Olin West, since it is addressed jointly to him. I believe that the action taken by the House of Delegates, which is reported in the Journal of the American Medical Association for September 24, will indicate to you the progress that has been made. I will be much interested in hearing your comment as to the action taken by our House of Delegates.

Very truly yours,"

I am familiar with the Principles of Medical Ethics and lecture on the history of medical ethics in a medical school. The framework of the principles was developed in Manchester, England, and was first published in 1803 after William Heatherton and others had given their opinions. The first draft was modified and adopted by the AMA in 1848. The modified draft being written by Isaac Hayes, then editor of the Journal of the AMA. Since that time there have been modifications of the fundamental principles, primarily with the object of covering new developments, both in scientific and what might be called the general nature of the medical practice. There isn't the slightest scientific or authentic evidence in support of the statement that under the Principles of Medical Ethics, as interpreted by the AMA and its affiliated constituent and component societies, they can and do frequently condemn as unethical group practice on a risk-sharing basis, particularly because such practice is in business competition with and threatens the incomes of doctors engaged in practice on a fee-for-service basis; and particularly, the doctors

so practicing who are members of the AMA and its affiliated societies.

Q. Are the AMA and its affiliated constituent and component societies interpreting the rules of ethics principally because, in so far as the risk-sharing prepayment basis of medical practice is concerned, there is competition from the money angle between fee-for-service practice as compared with group practice?

A. Again, I would say that from long tradition everything that is taught to every medical student in every qualified medical school is absolutely opposed to any such concept of medical practice.

I have never combined and conspired for the purpose of restraining trade in the District of Columbia, or for the purpose of restraining Group Health, or for the purpose of restraining the members of Group Health, or for the purpose of restraining the doctors serving on the medical staff of Group Health, or for the purpose of restraining doctors not on the staff of Group Health; or for the purpose of restraining the Washington hospitals in the business of operating such hospitals. I never did anything, wrote anything, or discussed with anybody, any matter concerning the Washington hospitals in 1937 and 1938. I have never endeavored or tried to restrain anybody from becoming a member of the staff of Group Health, and to my knowledge I don't know anybody who has been or now is on the staff of Group Health. I have done nothing for the purpose of hindering or restraining Group Health, any members of its staff, or anybody connected with Group Health. I have heard it has a clinic on I Street, but I don't even know where I Street is. I have never been there and I have never done anything to restrain them from carrying on this clinic. I published a current comment in the Journal somewhere in December, 1938, covering the hearings which had been held in Congress on the question of the appropriation, that is, Congressman Woodrum's hearing.

Cross-examination.

By Mr. Lewin:

I work on a salary for a fairly large corporation. When I asked Mr. Hartfield for information I was specifically inquiring as to how the excitement in Washington inter-

ested the average citizen and asked him to ask some of his employees what their reaction was. He found a rather disinterestedness among his employees which I found interesting and heartening. To me it was interesting that a movement that had so much pressure interested so few.

I take responsibility for the article published in the Journal of October 2, 1937, concerning Group Health.

DR. CHARLES S. WHITE, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a surgeon. I graduated from George Washington Medical School in 1898, practiced my profession from that time, and have specialized in surgery from 1908 to date. I spent two years in private practice and eight years in hospital experience in Emergency, George Washington, and Columbia Hospitals in Washington, and part-time in New York. I am professor of surgery at George Washington University and head of the Department of Surgery in Gallinger and the Doctors' Hospital, and on the consulting boards of four or five others, including Emergency, Garfield, and Providence Hospitals. I have been connected with George Washington in a teaching capacity since 1899. I am on several committees at the hospital, one on administration and one on admission to hospital privileges.

I have been on the committee on admission since 1934, with Dr. Mallory and Dr. Howard Kane. Dr. Mallory covers medicine; Dr. Kane obstetrics and gynecology, and I surgery. In reporting on privileges we report to the staff of 40 or 50 men, who have practicing and teaching privileges in the hospital and medical school; George Washington University had two staffs, an appointed staff and a courtesy staff, the latter of which has no official connection with the hospital. Courtesy staff doctors are allowed to visit patients in the hospitals. The staff is appointed by the Board of Trustees of the University. The committee on applications, on investigating an application for privileges, refers it to the appointed staff. The appointed staff takes care of patients, mostly free patients, in the hospital of the University, whereas the courtesy staff is composed

mostly of those doctors, practicing physicians of Washington, who are permitted to take and treat private patients in the hospital. Any doctor who wishes to avail himself of courtesy staff privileges fills out an application on a printed form stating his qualifications, age, education, the societies to which he belongs, the medical papers written by him, and his experience. The application is read before a staff meeting and is then turned over to me as chairman of the committee on privileges; I sort them, keeping those relating to surgery, and referring those relating to medicine to Dr. Mallory and those relating to obstetrics and gynecology to Dr. Kane. I then refer applications for surgical privileges to the Washington Academy of Surgery, as in 1934-1935, we decided to adopt this procedure to secure investigation from the Academy. The Academy acts in an advisory capacity to the committee. The secretary of the Washington Academy of Surgery receives the applications, investigates them, and returns the applications with reports which I receive and take back to the next regular meeting of the staff for a vote. When the vote is taken the applicant is notified of the vote. Since I have been connected with George Washington University Hospital, or any of the hospitals here in Washington, no hospital permits a man to practice without courtesy privileges unless in a grave emergency, and then sometimes that is waived until he can make out the proper application, and that is true of all hospitals. After the application is voted on by the medical staff it is then sent to the dean, or the superintendent of the hospital, who happens to be the dean, and his secretary takes up the matter from that point on.

I am a member of the Washington Academy of Surgery and am on the committee investigating the qualifications of applicants to practice surgery. I know that an application on behalf of Dr. Raymond E. Selders, whom I never met personally, was made to George Washington University Hospital sometime in 1937 and was turned over to me after it was read at a staff meeting. I referred the application to the Washington Academy of Surgery. The reference of any application for courtesy privileges in George Washington Hospital to the Washington Academy of Surgery had nothing to do with Group Health, as all applications for surgery privileges are turned over to the Academy, and that procedure is routine. As soon as the application was returned by the Washington Academy of Surgery it

was read before the staff of George Washington University Hospital. The application was not delayed at all and went through the regular routine. I knew at the time that Dr. Selders was connected with Group Health because I had read of it in the newspapers, as news of the situation was all over the newspapers, including the front page. Dr. Selders' connection with Group Health had nothing whatsoever to do with the handling of his application at George Washington Hospital. The recommendation received from the Washington Academy of Surgery on Dr. Selders' application was adverse. The application was turned in to the dean, who presided at the staff meeting, with the notation that the Academy did not approve of his application. It was then put to a vote, submitted to the open staff meeting, and the staff voted not to give him the privileges. Nothing was said at the staff meeting that his application should be rejected because he was a member of Group Health, and that had no effect so far as I know on the vote; and the vote was based solely on his professional qualifications. The hospital made no independent investigation into the qualifications of Dr. Selders, and certain other doctors were rejected along with Dr. Selders, and his rejection in no way differed from them or from any other doctor seeking surgical privileges at George Washington whose application was denied.

When an applicant seeks general surgical privileges in a hospital that means the privilege of operating on anyone he might send there as a patient, and do any operation which he thinks the patient requires, without any sort of supervision. In other words, to have complete charge of the patient, and to do a major operation, open the abdomen, or anything you want. It is the highest privilege that you can give a doctor, and that is why such an application is scrutinized pretty closely, as a hospital is more or less responsible for the work being done there, and feels that man who can do any sort of an operation without supervision should be a first-class surgeon, with a large amount of experience. In some cases, a man is allowed to operate while some other practitioner stands by in order to allow proper experience. "Without supervision" would mean that a man may go into a hospital and do as he pleases with the patient, if the patient permits it. I am a member of the District Medical Society, of the AMA, and am on the committee of the District Society dealing with

compensation, claims and adjustments. I do not now hold any office in the Washington Academy of Surgery, but am a past president of it, as well as of the Medical Society.

Cross-examination.

By Mr. Lewin:

Dr. John Reed was a member of the medical staff that voted on the application of Dr. Selders, as well as Drs. Jacob Kotz, Daniel Borden, Dr. Mallory, Dr. Arch L. Riddick, and Dr. Warren W. Sager; I only attended one meeting during 1937 and 1938, and I am not familiar with the committees or the members of the various committees of the Medical Society or their activities. I voted as I did on Dr. Selders' application because of the report received from the Washington Academy of Surgery. I don't know upon what the other members of the staff based their votes. Dr. Selders' application disclosed that he had graduated in medicine from the University of Oklahoma in June, 1927; that he received a Bachelor of Art and Bachelor of Science degree in chemical engineering; that he received a Bachelor of Science degree in medicine. I think the University of Oklahoma is all right now, but I don't know what it was then. The application also disclosed that he interned in 1927 and 1928 at St. Joseph's Infirmary at Houston, Texas; I know nothing adverse to that institution, but whether or not he had good interne training would depend on the institution, and I cannot say whether his training was good or bad. I also found that he was a resident in surgery at Worcester City Hospital, in Massachusetts, in 1936-1937. I know nothing of the standing of that hospital, and nothing against it. This information was not used by our committee and was sent by the staff to the Washington Academy of Surgery for its recommendation. I was not a member of the credentials committee of the Washington Academy of Surgery and did not attend its deliberations or take part in the investigations it conducted concerning Dr. Selders. I saw that he had been admitted to practice medicine in the District; he had graduate work in the school of medicine in the University of Pennsylvania, a very good institution; and would appear to have some qualifications in some kind of surgery. Dr. Selders applied for general surgery, which means general surgery of all types and

would include minor surgery. We don't discriminate. He asked for general surgery and he was turned down in general surgery. He didn't ask for minor surgery. I saw that he was a member of the Harris County Medical Society and of the AMA, but didn't know whether he was a member of any of the local societies, and I presumed that he was not a member. I saw that he had had teaching experience in the University of Oklahoma and staff appointment at various hospitals, the Memorial Hospital in Houston, Texas, and St. Joseph's Infirmary, and had made some contributions to medical literature, but I don't think what a man writes indicates his ability in surgery. I see that he gave some references, a Dr. Lee, Dr. Brown, Dr. Moore, and Dr. McIvor.

I wasn't present at the meeting of the Washington Academy of Surgery that took up the application of Dr. Selders. The Washington Academy of Surgery is made up largely, if not entirely, of members of the Medical Society. I don't know what action the Medical Society took regarding the ethical question of a doctor being with Group Health. I think that if Dr. Selders had asked for privileges in minor surgery, on his record, he might have gotten it, but it is not customary to make a suggestion to that effect, as it is not up to the hospital to suggest how a doctor may obtain privileges; if he desires them he should seek them. If Dr. Selders had re-applied for minor surgery it would not come to me because that comes under medicine. The last I recall is that Dr. Selders' application came up again at a staff meeting on October 10, 1938, and it was moved and seconded that the application be referred to the Washington Academy of Surgery and follow the usual procedure. I know Dr. Glenn I. Jones but I never told him that any member of the medical profession who joined Group Health would lose membership in the Medical Society and that any member who consulted with a member of the staff of Group Health would likewise lose membership. I may have said it was my opinion that something like that would happen, but I couldn't tell him it would happen.

Redirect examination.

Dr. Selders' application took the regular course that every other application had taken prior to his, and ever since, as far as I know, and there was no exception in his case whatsoever. Since the time it was voted that the

Washington Academy of Surgery should make investigations on applications for general surgery. I have never personally investigated an applicant and have always felt that the Academy was in a position to do it much better than I. I have never written any reference of any applicant, and the references, as well as the application, went to the Washington Academy of Surgery. Dr. Selders' application was on the regular form. We get about 150 to 200 applications for surgical privileges alone a year. Courtesy privileges, when granted, are for one year at George Washington. Along with Dr. Selders' application, in the course of a year, I sent 20 or 30 other applications to the Washington Academy of Surgery; other applications for surgical privileges were rejected, as it is nothing unusual to reject applications for surgical privileges. The question of membership in the local society has never come up in the consideration of an application, so far as I know. The matter of Dr. Selders' membership in any organization was not discussed. There was lots of publicity about the matter and I felt that Dr. Selders ought to have a square deal; I made it plain to the staff that their decision was to be purely on his professional qualifications. I don't remember seeing a questionnaire of Dr. Warfield's, and if I ever saw it I must have thrown it in the waste paper basket, for it made no impression on me, and no such questionnaire ever came before the staff of George Washington Hospital for action that I recall; and I have no recollection of ever acting on any such questionnaire. No action was ever taken on the so-called Mundt Resolution at any meeting I attended at George Washington Hospital, and such a matter never came before the staff for discussion. No motion ever came up for consideration by the staff to the effect that only members of the District Medical Society should be members of the staff of George Washington; as a matter of fact there are plenty of members of the staff who are not members of the District Medical Society, some 20 or 30, and there have been such for more than five years. I don't think that the staff at George Washington ever took any position whatsoever with reference to Group Health. I never heard Group Health discussed in the Society. When I voted upon the application of Dr. Selders I certainly did not vote for his rejection in an effort to restrain or break up Group Health. I voted to reject him purely on the report of the Washington Academy of Surgery in which

I had the utmost confidence, believing they would give him a proper examination or investigation, and voted for nothing else, as I didn't know Dr. Selders, had never seen him, and I would reject any man that the Academy would not approve, even my own son.

Recross-examination.

Surgical applications are referred to the Washington Academy of Surgery because the Academy has a committee of ten men having affiliations with all the hospitals in Washington, and I believe that such a committee of ten could investigate a man better than a committee of one, which would be me, and we refer such applications to that committee as it is already set up, acting for all the hospitals in Washington, in an effort to get a standard board of examination. When the Washington Academy reports on an applicant simply as disapproved that is sufficient for our purposes, as we have complete confidence in the Washington Academy of Surgery and, hence, the hospital voted to accept their recommendation and our committee knew nothing of Dr. Selders except that the Washington Academy of Surgery had turned him down for undisclosed reasons.

Redirect examination.

At one meeting the committee turned down two men for privileges, one Dr. Allan E. Lee, who asked for general surgery and was disapproved, and the other was a member of the District Medical Society also seeking surgical privileges, both turned down because we did not think they were qualified to do general surgery.

DR. HENRY C. MACATEE, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I have resided in the District since 1895. I have been a member of the Medical Society of the AMA since 1902. I have been a practicing physician in the District since 1901. I graduated from George Washington University in 1900, interned at Garfield from 1900 to 1901. In 1903 and 1904

I was superintendent of George Washington University Hospital. I am a member of the Society of Incorporators, of the Board of Directors; of the Executive Committee of the Board of Directors, president of the Medical Staff, and ex officio chairman of the Advisory Committee of Garfield Hospital. The Board of Directors of Garfield is the governing board and is composed of about 18 or 20 laymen besides myself, Dr. Reichelderfer, and Dr. Lindsay. I have specialized in internal medicine since 1918.

In the middle of May, 1937, my attention was first directed to Group Health when I was invited to attend a meeting at the office of Dr. William Gerry Morgan. Prior to that I knew nothing whatever of Group Health. I went to the meeting, which was attended by Drs. Morgan, Christie, Groover, Colonel Glen I. Jones, and some medical officer of the Army whom I don't remember. Colonel Glen I. Jones was the speaker, giving information concerning Group Health. The next occasion of my obtaining information concerning Group Health was at the meeting of the Executive Committee of the District Medical Society on June 1, 1937. At that time I was a member of the Executive Committee. I was then and am now a delegate of the Medical Society to the AMA. From 1905 to 1920 I was recording secretary of the Medical Society; in 1921 I was president of the Society and, therefore, I was a member of the Executive Committee by election and was chairman for two or three years.

At the Executive Committee meeting of the Medical Society on June 1, 1937 there was a discussion concerning Group Health. Dr. Verbrycke made a report that he had obtained a copy of a prospectus of a mimeographed pamphlet describing the purposes and plan of operation of Group Health, marked "Confidential," which I had seen a few days previously at Dr. Verbrycke's and my own office. The minutes of June 1, 1937 substantially indicate what occurred at that meeting.

Defense counsel read from the minutes of the Executive Committee meeting of June 1, 1937 (Gov. Ex. 36) to the jury as follows:

"The Chairman, in addressing the meeting, said that the reason for calling the special meeting was on account of certain serious situations that had developed. The Home Owners Loan Corporation, the Veterans Bureau, the Soil

Conservation Department, and the Reconstruction Finance Corporation had already undertaken the development of a plan for medical care of their employees. He had learned that the Home Owners Loan Corporation was attempting to get an appropriation from Congress"—

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"He thought it was the duty of every member of the Society to contact their representatives with a view to blocking this effort. The idea was to get sufficient funds to finance a medical service plan. Briefly, the plan, according to his information, was that Dr. H. R. Brown is to be the Medical Director at \$8,000 a year. Mr. Brown is now in the Veterans' Bureau in charge of the Tuberculosis Division. Government employees would pay a certain amount per annum from their income. The Chairman was under the impression that it would be impossible to get an injunction out against the procedure and that the only hope would be to hold off the adoption of the plan until the Medical Society could work out a substitute plan that would be less vicious. Dr. Thompson called on Dr. J. Russell Verbrycke, Jr., who had been very much interested in this subject.

Dr. Verbrycke said that he had heard of this plan and he had in his hand a prospectus, marked 'Confidential,' in which details had been very well worked out. He added that there were certainly some parts of the plan that would seem intriguing. He had written a letter to Dr. W. C. Woodward, which he stated was semi-official, in which he outlined the situation with a view to getting the opinion of the AMA headquarters. He then proceeded to read rather extensively from the prospectus at hand. This prospectus was to be known as the Group Health Association, Inc. Mr. William F. Penniman of 1869 Wyoming Avenue, N. W., is President; Mr. H. T. Berry, 3013 Rittenhouse Street, is Secretary. The Twentieth Century Foundation was beyond a doubt interested in this so-called Filene Association, and would in all probability help finance the project to get it started. It had been estimated that there were some 119,000 Government employees and that the expected sum to be obtained from these employees would amount to \$1,750,000.00 per annum. It was contemplated to hire 80 physicians; their salaries would range from \$3,000.00 to \$12,000.00 per annum. They would not be allowed to do outside work. Briefly, the plan was to have an employee, whose income

was \$1,000.00 a year, contribute \$40.00 a year for health service. If a man's income was \$10,000.00, he would pay \$400.00 a year. It is estimated that at the present time individuals pay from 4 to 5 percent of their income for medical care. One physician would take care of about 833 people. It was contemplated to have the wife and family of the Government employee included. The children would be on a sliding scale.

Colonel Glenn I. Jones, who was present by invitation, stated that he had been invited to a meeting of the Home Owners Loan Association which was organizing a plan for taking care of the health of its families. He stated frankly that he had been offered the general management of this organization. The conference he attended lasted 2½ hours. He promised then that he would attempt to draw up an organization chart. He first suggested a small clinic with physicians and consultants. He told them frankly that if the Medical Society of the District of Columbia disapproved their efforts that there would not be any available medical assistance which could be depended upon. He stated that he had consulted Drs. C. S. White, T. A. Groover, A. C. Christie, and also William Gerry Morgan. He learned that they were opposed to the entire proposition of the prepayment plan."

My statement is not fully represented in the minutes. What I actually said was that I had attended the meeting at Dr. Morgan's office, that I heard the statement made by Dr. Jones at that time and that it was obvious that much of our information was based on rumor; that the only concrete evidence about the plan was the prospectus; that the plan had not yet been fully organized; wasn't fully completed; wasn't ready to go into action. If and when it did go into action and came into conflict with the Medical Society in any way our attitude would have to be entirely predicated on our own organizational rules and regulations. That we might have to consider the question of contract practice; that in that case it might be necessary to discipline members if they entered into contracts or contract practice contrary to our regulations; that if the relations to hospitals were undesirable from a medical point of view our action would be limited to such influence which we might exert through our members, who were members of the medical staff of the hospital, but that we could not directly

control the hospital for reasons well known to ourselves. The regulation I had in mind in speaking of contract practice was the one adopted in amended form in March 1937, Article IV, Section 5, which had been in the constitution since January, 1936. The adoption of that particular article had nothing whatsoever to do with Group Health, nor did the amendment thereto, adopted in March, 1937, for to my knowledge nobody in the Executive Committee had any information about Group Health in March, 1937, and I had none. In no discussion of the amendment by the Executive Committee was GHA ever mentioned. The object of the amendment was to provide the Society with a means of regulating its members with regard to contract practice insofar as the contract might be out of accord with ethical principles, and our conception of good public policy. The amendment was occasioned by a very disagreeable problem which arose in the District of Columbia, that had nothing whatever to do with Group Health, but rather had to do with a member and an industrial medical clinic formerly employing that member but which had summarily discontinued his services, and employed another member. The clinic was not Group Health and had been in operation prior to January, 1936. The June 1, 1937 meeting of the Executive Committee was held and the only action taken there was to authorize the appointment of a subcommittee to gather facts relative to Group Health for presentation to the Executive Committee for its guidance. Dr. McGovern was chairman of that subcommittee, the other members being Dr. Hooe, Dr. Templeton, Dr. Connolly, Dr. Davis, and Dr. Gill, Jr. I had no official connection with the subcommittee. The appointment of that committee was the only action taken by the Executive Committee at the June 1 meeting.

I discussed Group Health with some colleagues at the Atlantic City convention of the AMA in June, 1937, and with Dr. Woodward on several occasions, and made a brief report to the House of Delegates of what we had learned in Washington; it was received but no action was taken on it.

On June 21, 1937 the Executive Committee meeting of the Medical Society received the preliminary report of the fact-finding committee; Dr. McGovern reported for his committee that they had been diligently seeking information regarding Group Health and had been unable to obtain official information. I made a verbal report of my attendance at

the AMA convention and my efforts to communicate these facts and rumors to the House of Delegates, and Dr. Verbrycke made a report, Dr. Verbrycke stating that from what information could be obtained, the movement as it appeared was not a drop in the bucket to what this movement might grow to; Mr. Ross Garrett appeared at the meeting with a great deal of information: Mr. Garrett is the administrator of the Health Security Administration, an eleemosynary institution for bringing contact between indigent and near-indigent patients with facilities for their medical care, in hospitals and dispensaries.

Q. Under whose supervision is it administered?

The Government objected on the ground of immateriality and was sustained, with exception noted.

Defense counsel read the minutes of the Executive Committee meeting of June 21, 1937 (Gov. Ex. 36) to the jury as follows:

"It was decided that it was only right that the Executive Committee should know all the facts and, therefore, Dr. Brown and Mr. Russell should appear before the Executive Committee and give all the facts."

"Mr. Garrett has emphasized that any action taken by the Society should be a matter of all haste as he had definite information that the material and wherewithal for setting up a medical care prepayment plan was definitely at hand. It was ascertained that the Government is allowing free time for the activities destined to bring a plan of medical care to Washington. No one seemed to be able to find out whether Dr. Brown and Mr. Russell were on the Government payroll. It was mentioned in this connection that with various New Deal projects workers were not always shown to be on the payroll but their source of income from the Government appeared unmistakably. Dr. Verbrycke at this point with a detailed plan that had been organized by the subcommittee as an acceptable substitute for the cooperative medical service plan.

"Dr. Verbrycke stated that he had sent by air mail an outline of the cooperative medical service plan to Dr. W. C. Woodward, and requested that Dr. Woodward meet with him in Washington. Every effort was made by Dr. Woodward to ascertain who was financing the project. He met with little success with his inquiries.

"It was stated that Dr. H. C. Macatee at the meeting of the House of Delegates in Atlantic City, outlined the plan that was all ready for trial in Washington. It seemed as though the attitude was:

" 'We are sorry; we have no solution; you work it out.' "

The plan referred to was a report made by the committee on economics, Dr. Verbrycke, chairman, in which the salient principles of some cooperative plan might be considered by the Medical Society to offer to the public. The minutes of June 21, 1937 show the following action:

"The Secretary made a motion that a special meeting of the Executive Committee be held on the evening of Wednesday, June 23rd, and that Dr. Henry Rolfe Brown be informed that his presence would be welcomed; also the presence of any of his conferees.

This motion was seconded and in the discussion the question of executive session on that evening was brought out. It was decided that this could be worked out afterwards. This motion was adopted."

The minutes do not convey the spirit of what I said on that occasion. I said substantially what I said on a previous occasion in which I stated that the record would have to be qualified by my conviction that so far as the Medical Society itself could proceed in this or any similar circumstance, it would have to be limited by its own constitution and by-laws, and what it could do under the constitution and by-laws in disciplining its members if they should become involved adversely with any provision of the constitution and by-laws, and that so far as hospitals were concerned, we should only exert an influence through our own members so far as that might go.

Defense counsel read from the minutes of the Executive Committee meeting of June 21, 1937 (Gov. Ex. 36) as follows:

"Dr. H. C. Macatee, in addressing the meeting, stated that the Principles of Medical Ethics of the American Medical Association had been amended at the meeting in Atlantic City so that the interpretation of the free choice of physicians would be broadened with the idea of adjusting itself to the various compensation laws. He then recited some of the details of his attempts to bring to the House of Delegates the important situation that now confronts the profession in Washington. It was not until Thursday,

the last session of the Delegates, that he was able to bring the matter on the floor, and as stated scant attention was given to it. Details of Senator Lewis' presentation to the House of Delegates were given. It appeared that the Senator had come before the House of Delegates with the knowledge and approval of the Nation's Chief Executive. He let it be known that the President was sympathetic with the American Medical Association and its motives, and he, Lewis, wanted to be advised as to just what the profession wanted done. The Kopetzky set of resolutions were definitely tied in with a conference"—

Mr. Lewin: The part that you are reading now—does not that refer to something else that is not germane to this case?

Mr. Kelleher: And is not in evidence, either.

Mr. Leahy: Oh, yes; it is all in evidence (resuming reading):

"The Kopetzky set of resolutions were definitely tied in with a conference that had been held at the White House last April, at which Miss Esther Everett Lape and other socially inclined members of the profession were present. Specifically, representatives of the American Medical Association were excluded. In effect Kopetzky's series of resolutions, after going to a reference committee, were in essence similar to what was given two years ago to the plan sometimes known as the Washington Plan presented by Dr. Macatee. In effect the American Medical Association had accumulated considerable data and these data were available to the various state societies and to the workers in the United States Government. The plan from New York was predicated on the principle that care of the sick indigent was a taxpayers' problem; that the doctor should be paid for taking care of them, further that hospitals should be financed by the Government and that no longer would there be many hospitals in bad financial straits; further, the Government would subsidize scientific investigations of various hospitals.

Dr. Macatee, in summary, stated that two ways available in combatting or controlling any such scheme as recently proposed in Washington might probably be handled (1) through disciplining our own members who undertook to participate and (2) the possibility of doing something to recalcitrant hospitals through pressure on their staffs. He

mentioned the various cooperative plans that were now in force, that the Ross-Loos plan of California and various county societies had through their medical societies handled the situation. There was now a bill before the legislature in the State of Wisconsin that would definitely prevent any interference with doctors who were members of societies in their activities in any scheme of socialized medicine. In other words, the societies would be prohibited by law to discipline their members."

Dr. Brown and Mr. Russell were invited to appear on June 23rd but actually appeared on June 24, 1937, i. e., Dr. Brown, Mr. Penniman and Mr. Zimmerman came on that date.

Defense counsel read from the minutes of the District fair transcript of what occurred.

I am not going to take the time, ladies and gentlemen of the jury, to read all of this; it is too much. There are some portions which I would like to bring to your attention, more particularly a statement by Dr. Conklin which was given toward the end of the meeting, as well also as a statement by Dr. Groover (reading)

"DR. CONKLIN"—

This is toward the end of the meeting—

"I think that all of us present tonight appreciate just what these gentlemen have done. They have been kind enough, good enough, to come down and meet with us. They have answered all of our questions and have not denied us at all, no matter what their own personal feelings may have been concerning some of it. We are primarily interested in the patient's welfare. That has been demonstrated time and time again in this country and throughout the United States. I am wondering if they would accept a committee of three of the Medical Society to meet with them with a view of making presentations as clearly as possible of the Medical Society's attitude primarily toward this particular proposition from the viewpoint of the patient primarily. I wonder if that would be acceptable. I have no authority to say that the Medical Society would appoint such a committee, but if that would be acceptable to the Medical Society, do you gentlemen think you would accept a proposition of that kind?

Dr. Brown: A further meeting to elucidate certain questions?

Dr. Conklin: I am sure there are certain ideas that definitely seem to be fixed. There is a possibility in further conference with three representatives of the Medical Society who would go down to the Home Owners Loan Corporation and talk these things over and see whether or not some alternative proposition will operate that would be acceptable to some eight hundred practicing physicians here in the District of Columbia. I would think it would be a wonderful thing."

Mr. Lewin: Will you read what Dr. Brown said?

Mr. Leahy: Oh, surely (reading): "Dr. Brown. Our objectives are identical with those you have expressed. We have no objections to meeting any committee of three.

The Chairman: To confer with their own committee if they would like to have such a meeting.

We have a board of trustees, said Mr. Penniman. It might not be a bad idea to have as many men as they want to discuss the thing further. There is no question that other units in the Government are going to undertake the same thing.

Dr. Conklin: If we may have a definite assurance of tentative acceptance of this plan, I think your coming down has been just the most successful thing with a view to definite harmony. I think that is what we want. We want to see these men and greet these men and have them certainly not fighting organized medicine, because I think any doctor who attempts to do that is doomed to failure. We want to have this committee of three representatives meet with you and talk these things over with a possibility of making some little rearrangement wherein we can come before our entire membership and present this thing and recommend adoption.

Dr. Brown: We are anxious for cooperative intercourse. We would be glad to have you consider those plans.

Mr. Penniman: I want to say what I should have said and would have liked to have said at the outset. Reversing the words of Shakespeare, I came down here with the idea of praising Caesar, not burying him. I have the most profound respect for the medical profession, always have had and always will have. It is the desire of this Association to work to the ultimate end that we may give our employees

medical care—I speak not as an official of the Home Owners Loan Corporation, but as one of the employees—medical service of the highest type within their ability to pay and to solicit at every point of view possible the full cooperation of the Medical Society of the District of Columbia. Glad to have it. I would like to make a suggestion. Since we have a board of trustees consisting of eleven employees of the Corporation who have been elected by the employees, if you would be good enough to drop us a line so we can put it clearly to the board, your point of view, I am safe in saying that it would meet with a ready response.

Dr. Conklin: You mean, the point of view as to this committee of three?

Mr. Penniman: Yes."

And at that time Mr. Penniman and Dr. Brown and Mr. Zimmerman left the meeting. Then following a suggestion on the part of the chairman, after those three had retired:

(Reading further):

"The chairman said he would welcome a motion to the effect that a copy of these minutes be sent to the active membership so they would know what was going on. It was his opinion that 90 per cent of the membership knew nothing about this plan."

Then follow pages of discussion back and forth upon a motion, and finally, after expressions by Ruffin, Bennett, Hooe, and Schoenfeld, and I don't know how many more, there was a motion.

A proposition was adopted at that meeting finally, and a committee including part of the old committee was appointed for that purpose. I served as a member of that committee. On July 26, 1937 I went down to talk with the board of trustees of Group Health. That committee reported to a meeting of the Executive Committee on July 12, 1937. The minutes of that meeting (Gov. Ex. 37) is a fair transcript of what occurred.

Defense counsel read excerpts from the minutes of the Executive Committee meeting of July 12, 1937 (Gov. Ex. 37) as follows:

"Dr. F. X. McGovern, Chairman of the subcommittee that was appointed to confer with representatives from the Group Health Association, Inc., was recognized and

made a motion that his report be given preference over the other agenda for this meeting and that it be heard at this time. It was duly seconded and adopted.

For the information of the new members of the Executive Committee Dr. McGovern outlined the prepayment medical care plan that has been set up by the Home Owners Loan Corporation, stating that the Executive Committee had appointed a subcommittee to meet with the committee on Medical Economics to study the prospectus and bring a report back to this committee. A report which was prepared by Dr. J. Russell Verbrycke, who was then the chairman of the committee on Medical Economics, was approved in principle by the Executive Committee at a subsequent meeting. Since that time the subcommittee has met and studied and reviewed supplementary plans by Dr. Verbrycke which Dr. McGovern offered as a report of the Executive Committee tonight.

Dr. H. C. Macatee interpolated for the information of the new members of the Executive Committee that upon the adoption in principle of the report of the subcommittee, the subcommittee was given instructions to negotiate on the basis of the report with the Medical Service Corporation, and this supplementary report is now made to gain alternative instructions.

Dr. McGovern, in answer to why the subcommittee had not met with the Group Health Association representatives up to this time, said that his committee did not feel that it was ready to meet until it had something concrete to offer. He stated that within the past week Dr. Olin West, Secretary of the American Medical Association, was in the city and met with the committee and it was felt that very important information was obtained through this meeting. He added that he had a telegram from Dr. West stated Doctors W. C. Woodward and R. G. Leland, the latter Director of the Bureau of Medical Economics of the American Medical Association, would be in Washington Wednesday morning of this week."

Then other members spoke, including Dr. Templeton and Dr. Sprigg and Dr. Hooe, and then Dr. McGovern again. Dr. Ruffin spoke, and Dr. McGovern added that his committee "did not know just what the attitude of the Executive Committee of the Society would be, whether to fight this thing with the weapons at hand or possibly set up an

organization to combat it. The committee felt that some definite instructions should be given along that line."

Then follow talks by various members of the committee, and Dr. Macatee spoke and said that he had talked to a patient who was an attorney in the Corporation, and he said it could be done perfectly legally, and that if his recollection was correct the papers had gone over this attorney's desk and they could do anything not contrary to the law or the Constitution for the benefit of their employees. (Reading further):

"With respect to the duties of the subcommittee Dr. Macatee pointed out that according to the letter which was addressed to the members of Group Health Association it was clear that at least one medical man had made a contact with the Group and that they are on the verge of going into action. It had been thought by the subcommittee that we could probably go before the trustees and we could ask them what their prospectus meant when it said that they wished to enter into the fullest cooperation with the Medical Society of the District of Columbia, to ask for representation on their board in an advisory capacity and they wished to do their work in a harmonious way. We thought we might say to the board of trustees that the Medical Society had looked upon the organization with some concern."

The point was raised as to whether the subscribers would not, in the long run, have the free choice of physicians, and whether they understood that as soon as some grave medical problem arose among the employees they would follow the usual human instinct and say, "We don't want these hired men; we want the best", whether that would be disruptive of the whole plan, whether in view of those facts or other facts they might not feel that the principle of organized medicine, that the free choice of a physician is essential to the success of a proposition, and whether they might convey something looking to the entire medical profession of the District as a source of the medical and surgical services needed. (Reading further):

"If they could consider that we would be glad to take it up with the Medical Society and see what could be worked out. It is for this committee to decide whether it is likely that any good will come from such a meeting."

There followed discussions by the secretary, Dr. Ruffin, Dr. Hoöe, and then the motion which theretofore had been offered was withdrawn. (Reading further):

"Dr. Ruffin made a motion that the subcommittee be instructed to meet with the Home Owners Loan Corporation representatives to be addressed by Dr. Macatee along the lines discussed and bring a report back as promptly as possible to the Executive Committee with a view to a meeting of the Medical Society. Seconded and carried."

There followed a good deal of other talk with reference to other matters which are not germane to the point here.

In pursuance of the motion made by Dr. Ruffin, I personally addressed the Board of Trustees of the HOLC along the lines discussed. This was on July 26, 1937.

Q. There is a matter contained in the minutes of the meeting of July 12 which I would like to have you explain, please, and that—I think I am right in my memory—is with reference to a supposed or a so-called approved list or White List. Do you know to what I refer?

A. Yes, sir.

Q. Am I correct in saying that this matter also came before the attention of the meeting on July 12?

A. It did.

Q. Do you recall, Doctor, at what date, if any, any authorization was made to prepare an approved list which has been called a White List?

A. That was incorporated in the constitutional amendment adopted in March, 1937, in which the Executive Committee was charged with the duty of preparing such a list.

Q. Do you recall whether anybody upon the Executive Committee had been working upon the list from the date in March when authorization therefor was made?

A. There was a subcommittee, of which Dr. McGovern was either chairman or a member, which was working on that duty.

Q. I ask you, Doctor, if the preparation of an approved list had anything whatsoever to do with Group Health Association?

A. Nothing whatsoever.

Q. I will ask you further what the approved list resulted from as an activity of the District Medical association?

A. It resulted from a hearing on a complaint by the Executive Committee against an industrial clinic which, in

turn, resulted in the original adoption of Chapter 9, Article 4, Section 5, which was amended in March, 1937.

Q. Do you recall, Doctor, whether or not any legal advice had been sought by the Society with reference to the amendment of this approved list?

Mr. Lewin: I object to that, may it please the court, as totally irrelevant, incompetent, and immaterial.

The Court: What was the question?

Mr. Leahy: I asked the Doctor whether he recalled, with reference to this approved list, and also the amendment in March, under which the approved list was authorized, any advice of counsel had been sought and, if so, from whom?

The Court: Is that the White List?

Mr. Leahy: Yes, sir.

The Court: Objection sustained.

Mr. Leahy: May we approach the bench for just a moment; if your Honor please?

The Court: Yes.

(Counsel for both sides approached the bench and conferred with the court in a low tone of voice as follows:)

The Court: It is the same old question, isn't it?

Mr. Leahy: No, your Honor. This is on a different matter. I want to call the lawyers to corroborate the fact that the preparation of the White List had nothing to do with GHA; no question about the legality or illegality of it.

The Court: You mean, someone to corroborate what the witness is saying?

Mr. Leahy: Yes.

Mr. Lewin: He has not been permitted to say that, though.

The Court: I do not think his advice about it is of any importance. You may ask if there was an attorney present who heard what went on.

Mr. Lewin: That was on July 12?

Mr. Leahy: No; in March.

The Court: You want to corroborate this witness. His advice does not have anything to do with it.

Mr. Leahy: I will call him later on.

Mr. Lewin: Wait a moment, now. As I understand it, the facts are these, that you had a lawyer advising him back in the early part of 1937, but at the time the White List was prepared and issued, that was on July 12.

Mr. Leahy: It was authorized in March of 1937.

Mr. Lewin: The preparation of a list was authorized; that is right. That is the legal advice?

Mr. Leahy: I want to show that the preparation of the list had no connection with GHA whatsoever.

Mr. Lewin: But you cannot do that by saying that the constitution had nothing to do with it. They used the constitution on July 12, right there in that very meeting.

The Court: Whether they were advised by counsel I hold to be immaterial and irrelevant, and the objection is sustained.

Mr. Leahy: What I wanted to ask, your Honor, was this question: Were any attorneys present at that time? If there were, who were they? And that is all. I am not going to ask him for anything else, under your Honor's ruling.

The Court: What is the basis of that?

Mr. Leahy: Because I want the attorneys to show that the authorization of the White List had nothing whatsoever to do with GHA, that GHA did not enter into the picture. I want to corroborate the witness.

Mr. Lewin: The White List was issued July 12, 1937. It could not have any bearing upon why they left Group Health off the White List in July.

Mr. Leahy: It shows that the White List which was issued in July was not in reference to GHA at all.

The Court: If you can show that the questions leading up to the adoption of the White List occurred at some earlier period when GHA was not under discussion at all, that is all right; but I do not see what attorneys have got to do with it.

Mr. Leahy: I just want to identify those people who were there, so I can call the people who were there.

The Court: I am not going to have any advice of counsel in this. I do not see it, myself. It seems to me that the way to get at it is, as I suggested, to show that the origin of the thing was something else than GHA.

Mr. Leahy: That is what I was trying to get at.

The Court: I think you have a perfect right to show the history of the legislation as it developed, as showing the object and intent and purpose of it, and the background that brought it about, or to exclude the GHA as the motivating object of it, don't you see. What I am indicating is that I do not see where the advice of counsel gets into it in any way. So, whatever you do, do it with that in mind.

Mr. Leahy: I will, surely.

The Court: I can pass on individual questions a little better, but do not put questions which would be contrary to my conception of this thing. That is what I have in mind. If you do feel you want to put them, I think you had better come up here first.

Mr. Leahy: I will put a question which I have in mind, in some form to bring out this answer. I would ask the question, Were there any attorneys present in March of 1937 when this amendment and the authorization to prepare an approved list was adopted?

Mr. Lewin: And we enter an objection to that.

Mr. Leahy: Following that, Who were they?

The Court: Then what?

Mr. Leahy: That is all.

The Court: What is the purpose of it?

Mr. Leahy: The purpose is this: I think it is strongly indicative that this had nothing to do with GHA. We can show that for a year they had advice of counsel in order to meet another situation, and counsel advised them that this could be adopted under that other situation.

The Court: I do not think the advice of counsel has anything to do with it. The question is whether there were other objects which brought about the consideration of such action. It does not make any difference what advice they were given by lawyers about it or whether they consulted lawyers. The thing which I think you have a perfect right to do is to show the historical background of this resolution or constitutional amendment, whatever it was, which will eliminate GHA as the object of its enactment. (Addressing the jury): It is a little early, but I will let the jury go out now. Maybe you can get a little longer recess to make up for this morning.

(The jury withdrew from the courtroom.)

I of course do not want anything to occur that will impinge upon my main ruling of the other day, because I considered that carefully, and I feel that I am right about it and I think I ought to see that it is carried out.

Frankly, as you state the matter to me, I do not see what projecting lawyers into the matter has to do with it, because certainly I will not permit anything in the nature of disclosures of either the advice or the approval of coun-

sel about such matters. I will give you sufficient leeway to trace out the origin and history of this so-called legislative matter up to the point of its adoption in any way you can which excludes GHA as its object and intent.

Mr. Leahy: I will try to state it if I can. The purpose of asking the question as to whether attorneys were present in connection with the formulation of the amendment is in order to elicit information that the amendment had no connection with GHA; and then, when the attorneys can be called to corroborate the testimony of the witness, they would testify, not for the purpose of showing whether it was good or bad, lawful or unlawful, but merely that their advice was sought with reference to the formulation of the amendment in a manner entirely distinct from and unrelated to GHA.

That was my only purpose. So that if Mr. Flannery is put on the stand, I can ask him, "Mr. Flannery, was there anything said to you about GHA and did you give advice as to the amendment?"

The Court: Mr. Flannery was not present at the meeting, was he?

Mr. Leahy: I think he was present at the Executive Committee meeting.

Mr. Lewin: I can check for you, but I do not think so; at least it does not appear in the minutes that he was present.

Mr. Leahy: I would not know one way or the other. I might be wrong.

Mr. Lewin: My impression is that the subcommittee, back in the fall of 1936, had employed Mr. Flannery and Mr. Wheatley.

Mr. Leahy: Yes.

Mr. Richardson: Does the court intend to permit the Government to raise any question as to the motive back of this amendment to the constitution?

The Court: This is the White List. That is one of the actions they rely on to show conspiracy, I assume. It would not make any difference, as I pointed out, what the motives are. You have the question of intent, and intent, of course, would encompass the factual background that brought about the enactment of the resolution for the amendment.

Mr. Richardson: With reference to attorneys, it had to start with the inauguration of the enactment of Section 5.

out of which grew the White List, because that was promulgated under Section 5. If any question whatever is to be raised in this case as to the promulgation of the constitutional provision, whatever the purpose was, then it seems to me that the proof must be pretty broad.

The Court: I think that if Mr. Flannery was present at a meeting at which it was under discussion or in which action was taken, he might, of course, for the purpose of narrating the occurrences in that meeting, be a witness the same as anyone else. But if he was merely consulted by some member or agent of the Association in connection with the matter, then he is not relating anything he knows; he is relating only what he has heard. I cannot see the relevancy of it except for the one thing of detailing the occurrences leading up to the enactment of the resolution itself, if they are material. But I do not think they are material except as they go into the factual basis for it.

Mr. Leahy: I agree with you on that.

Mr. Lewin: I was going to make this observation. The mere fact that a provision of the constitution may have been lawfully passed, or passed for some particular reason—I have no doubt that the constitution of the Medical Society was not passed to hit Group Health, but we claim that acting under that constitution they issued this list which cut Group Health off.

Mr. Richardson: Would you concede that Section 5 was enacted without any such intent?

The Court: If you contend that the resolution was an overt act passed with the intention and for the purpose of carrying out this conspiracy, then of course they have a right to go into the intent and to show that it was passed for other purposes. There is no question about that.

Mr. Lewin: Our contention is that it was the first use made of it.

The Court: If you disclaim any such intention and say it was passed for a proper purpose but it was nevertheless put to an improper purpose, that is another thing.

Mr. Lewin: But I cannot quite go that far, because I think it was passed for an illegal boycott against any outfit they did not like.

The Court: If they can show otherwise, they have a right to show it; but they cannot show it in the way Mr. Leahy suggests. That is simply hearsay and goes merely to motive rather than to intent. I am not going to permit that.

Mr. Richardson: It seems to me that you have opened the door if you charge that what was done under it was done for one purpose, and the defendants charge it was done for an entirely different purpose.

The Court: You can take a perfectly lawful act of an organization and divert its use to unlawful purposes.

Mr. Leahy: Certainly.

Mr. Richardson: It becomes a question of fact, though, whether or not it is for an unlawful purpose.

The Court: For the purposes of this question, if it can be disposed of in that way, you may consider whether or not you are willing to admit that this constitutional provision originated and was enacted for other purposes than GHA.

Mr. Lewin: If I could state what I thought those purposes were and put that into a stipulation I would be willing to go along on that. If the explanation of this comes in, I think I am entitled to go into the minutes to show that they were warned that this would be a boycott and be an illegal one against anybody who fell within the terms of it.

Mr. Richardson: It is a direct attack on the legality of Section 5, then.

Mr. Lewin: No; intent.

The Court: Certainly if they attempted to show that they were acting upon the advice that it was lawful, you have a right to show the contrary. But I am inclined to think that this matter of belief as to the lawfulness of the act is excluded. I cannot see anything so far in this case, as I pointed out in my memorandum, to justify it. There is a very, very narrow field of the criminal law that permits that sort of proof. It is very narrow. Exception noted.

Defense counsel read from the minutes of the Executive Committee meeting of July 12, 1937 (Gov. Ex. 37) as follows:

"Dr. McGovern stated that he requested the various county medical societies in Virginia and Maryland, within 10 miles of the District of Columbia, to send him a list of their membership. He was not very successful by letter and intended to contact the secretaries personally. He added that there were a few physicians practicing medicine in the District of Columbia who were not on the rolls of the Society. The Society's office was busy at the pres-

ent time checking the list of physicians and surgeons as classified in the newest telephone directory and the Commission on Licensure has been approached to obtain a list of all licentiates in the District of Columbia.

The Chairman, Dr. Sprigg, stated that he requested a list of the licentiates and the Society's office was informed that the records of the Commission on Licensure would be available if the Society could supply clerical help to type the list.

Dr. McGovern read a proposed list of approved organizations, groups and individuals.

Dr. Macatee suggested that the words 'employed by' be substituted for the words 'connected with' in item 10. With this change the list was approved, upon motion, duly seconded and adopted, as follows:

1. All members of the Medical Society of the District of Columbia.

2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.

3. The United States Government Medical Personnel on duty in the District of Columbia, or within 10 miles thereof, i.e., the United States Army, Navy, Public Health Service, and the Veterans' Administration.

4. The Health Officer and attached medical personnel.

5. Membership of the District of Columbia Dental Society.

6. Membership of the Homeopathic Medical Society.

7. Members of the Montgomery County (Md.), Prince Georges County (Md.), Fairfax County (Va.), and Arlington County (Va.) Medical Societies, who reside within 10 miles of the District of Columbia.

8. Members of the Alexandria Medical Society.

9. The following compensation clinics: Farragut Medical Clinic, operated by Frank E. Gantz; First Aid Station, operated by Arch L. Riddick; Harry M. Lewis Clinic, operated by Harry M. Lewis; Market Compensation Accident Clinic, operated by M. J. Kossow; Northeast Insurance Clinic, operated by G. Henry Rawson; Union Market Workmen's Compensation Clinic, operated by Maxwell Hurston; Washington Industrial Accident Clinic operated by Edward Clark Morse; Washington Medical Building Workmen's Clinic, operated by Charles S. White.

10. All medical personnel employed by the Federal or Municipal Governments within the District of Columbia or within 10 miles thereof.

11. Membership of the Medico-Chirurgical Society (colored medical society).

12. Membership of the Robert T. Freeman Dental Society (colored dental society).

Dr. Raymond T. Holden, Jr., inquired as to the personnel (medical) of the proposed Group Health Association, Inc.

Dr. Hooe pointed out that it was a separate individual corporation and would have to be approved as a single unit. As a matter of information, Dr. Hooe would inquire if he was right in the assumption that this approved list would not have to be submitted to the Society but from tonight on would be filed in the Secretary's Office for reference."

Then follows certain discussions with reference to that by Dr. Hooe, the Secretary and Dr. Ruffin.

"Dr. Macatee said he understood that the list as read by Dr. McGovern was not a complete list. Was it to be assumed that when it was added to that another registered letter would have to be mailed to 900 or more members?

Dr. Hooe said that there were a good many fine men who were not members of the Medical Society, such as Drs. Henry R. Elliott, R. J. Kemp, and others. When these individual names were obtained they would be submitted by Dr. McGovern to the Executive Committee for approval.

Dr. Hooe's motion, with amendment by the Secretary was duly adopted."

I meant, when I stated that the approved list as read by Dr. McGovern was not a complete list, that Dr. McGovern had a great deal of difficulty in formulating a complete list because of incomplete information from the surrounding counties and incomplete information from our own District. The approved list as it came before the Executive Committee on July 12, 1937, did not have anything whatsoever to do with the approval or disapproval of Group Health because Group Health was not at a stage of development where it had asked for approval or where approval could be given; the Executive Committee at that time did not have sufficient information about Group Health to approve or disapprove it.

The approved list had been directed to be prepared in March of 1937. The approved list was mailed, as directed by the Executive Committee, to each member of the Medical Society. I do not recall that there was any direction of the Executive Committee that the list should be mailed also to the hospitals. Nothing occurred at the meeting of July 12, 1937, that is not recorded in the minutes of that date. The list was mailed on July 29, 1937.

Following the meeting of July 12 the subcommittee of the Executive Committee met with the Board of Trustees of Group Health on July 26. Drs. McGovern, Conklin, Verbrycke, Groover and Templeton and I were there. Dr. Groover is now deceased. We met in a large room at the office of the HOLC. I discussed with the Board of Trustees of Group Health the questions pertaining to it, and the attitude of the District Medical Society thereto.

Following the meeting a report was made to the Executive Committee on July 27, 1937, and then a report was made from the Executive Committee to the Medical Society on July 29, 1937 (Gov. Ex. 37). The transcript of the meeting (Gov. Ex. 10) prepared by stenographers of the HOLC records what was said at the meeting on July 26 surprisingly well.

Defense counsel read part of Gov. Ex. 10 to the jury.

Following the meeting of July 26, 1937 (Gov. Ex. 10), no further or additional information about Group Health was ever voluntarily given us that I know of:

With reference to the suggestions that I brought to the attention of the Board of Trustees of Group Health, particularly the questions to be answered as to the legality of Group Health, the Medical Society received no further communications from Group Health of any kind or character.

The minutes of the Executive Committee meeting of July 27, 1937 (Gov. Ex. 37) is a record of that meeting.

Defense counsel read from the minutes of Executive Committee meeting of July 27, 1937 (Gov. Ex. 37) as follows:

"A special meeting of the Medical Society of the District of Columbia, held Tuesday evening, July 27, 1937, at 8 p. m.

"Dr. F. X. McGovern, chairman of the subcommittee that had been appointed to make contact with the Home Owners Loan Corporation medical unit, was called upon to make a report. He opened his remarks by stating that pursuant

to recommendations made at the last special meeting of the Executive Committee he had prepared a letter which was sent to Mr. William F. Penniman in which letter request was made for copies of (1) contract of the Home Owners Loan Corporation; (2) adopted constitution and by-laws; (3) form or forms of applications for membership, and (4) any form of contract or agreement setting forth the service to be rendered to employees and their dependents.

"Dr. McGovern stated that Mr. Penniman had not given him a written answer but had called him up and asked that he have luncheon with him at the Raleigh Hotel. On this occasion he frankly stated that he would give responses to the questions asked in the registered letter that had been received, but copy of contract asked for he said he would have to refuse to exhibit. He thought the Medical Society's asking to see this contract was quite similar to going into Garfinckel's department store and asking them to show the contract they had with some firm with which they were doing business. Dr. McGovern then proceeded to read the prepared report as follows:

" 'Known facts in re the Home Owners Loan Corporation.

" '1. Corporation, Group Health Association, Inc.

" '2. In Home Owners Loan Corporation with which it had a contract.

" '3. Mr. W. F. Penniman is president, Mr. R. T. Berry is secretary-treasurer. Dr. Henry Rolf E. Brown is medical director.

" '4. Instituted presumably to give medical care, complete, to any and all members of the HOLC who may care to join it.

" '5. Non-profit voluntary prepayment insurance organization.

" '6. Must be in some way related, possibly by contract, to Home Loan Bank Board.

" '7. President, Mr. Penniman, avoided replying by letter to an official letter from the Society to him.

" '8. Mr. Penniman refused to give your committee a list of physicians employed by the corporation.

“ ‘9. Articles of incorporation so worded that all Federal Employees except Army and Navy may belong.

“ ‘10. President, while he states that purpose of the corporation is to provide medical service to low-income individuals, at the same time admits that the constitution and by-laws do not establish any income level.

“ ‘11. Invites attention to many other similar organizations in existence throughout the country and claims they do the job better than would otherwise be done.

“ ‘12. The lay members of the board of directors sincerely believe that they are performing a needed helpful and humanitarian function for their employees and apparently are firmly convinced that nothing that they are doing is in conflict with the established ethical principles of organized medicine.

“ ‘13. Dr. Brown is a physician recently retired from the Veterans Bureau and is being paid a good, under the circumstances, salary as Medical Director. Licensed in the District May 21, 1937.

“ ‘14. Whereas the officers of the Corporation express a desire to cooperate with the Medical Society of the District of Columbia, it is a fact that in the beginning and at all times there has been no real effort made to apprise the Medical Society of the District of Columbia of what they were undertaking. They have not considered officially the Medical Society of the District of Columbia during the formative stage of their organization. On the contrary there seems to have been a desire to keep the matter confidential.

“ ‘15. Meeting with officials of the American Medical Association on two separate occasions convinces us that the national organization is keenly interested in the whole affair and is solicitous as to how we will consider its relation to us locally and what policy the Medical Society of the District of Columbia will adopt in regard to it.

“ ‘16. What might be done.

“ ‘1. Consider it unethical.

“ ‘2. Control our own members in terms of the ethical requirements of our own constitution and by-laws.

“ ‘3. Offer a substitute plan of our own.

“4. Cope with the situation in the courts in terms of the local healing arts practice act.

“17. Your committee met with the board of directors of Group Health Association, Inc. The attitude of organized medicine in regard to the medical ethics in matters of this kind was fully presented to them. Quotations were read to them from the code of ethics of the American Medical Association and other relevant facts were presented. The only reply was made by a Mr. Loomis, member of the board of directors, to the effect that he hoped that the Medical Society would see fit to withhold final judgment until Group Health Association, Inc. had been in actual operation a sufficient length of time to practically demonstrate its purpose and its relation to the community and to the medical profession of the District of Columbia.

“Dr. H. C. Macatee elucidated the various points that had been brought up before the Home Owners Loan Corporation committee on the preceding evening at its home on the 8th floor of the old Acacia Building, First and Indiana Avenue, Northwest. He cited particularly a statement by one of the officers to the effect that if and when the project became large enough to include all of the Government workers of the city of Washington, that is, its scope raised to the nth degree, quoting him exactly, there would be room enough for all of the physicians practicing in Washington, and it was freely intimated that they all could be placed presumably on a salary basis, working for the project.

“Dr. Macatee, in continuing, read an excerpt from the latest issue of the Principles of Medical Ethics of the American Medical Association, having to do with the definition of free choice of physicians, as follows:

“The phrase “free choice of physicians” as applied to contract practice is defined to mean that degree of freedom in choosing a physician which can be exercised under usual conditions of employment between patient and physician when no third party had a valid interest to intervene. The intervention of a third party who has a valid interest and who intervenes does not per se cause a contract to be unethical. A “valid interest” is one where, by law or necessity, a third party is legally responsible either for cost of care or for indemnity. “Intervention” is the voluntary assumption of partial or full financial responsibility for

medical care. Intervention shall not proscribe endeavor by component or constituent medical societies to maintain high quality of service rendered by members serving under approved sickness service agreements between such societies and governmental boards or bureaus and approved by the respective societies."

"The ambiguity of the situation was immediately apparent.

"Dr. Macatee said that he certainly did not read this at the time of the meeting with the H.O.L.C. unit. He did; however, read on that occasion extensively from the Principles of Medical Ethics under which the medical profession is bound, showing that the project as at present constituted could not be expected to be approved by the Medical Society of the District of Columbia, the local unit of the American Medical Association.

"Dr. Macatee was rather inclined to think that there should be no hasty action taken at this time and he would recommend that the four possible solutions as prepared by the subcommittee be not read before the Medical Society. He too thought that it might be possible to bring some accord with the Group Health Association."

Then in connection with the visit of Dr. Woodward and Dr. Leland the minutes record as follows:

"The secretary explained just what had been suggested by Drs. William C. Woodward and R. G. Leland at the time of their visit. It would seem that Dr. Woodward would advise quo warranto proceedings, which proceedings would require a district attorney or United States Attorney for the District of Columbia, who at least was not hostile, that the suit would be filed in his name. He saw many difficulties in following this up. Dr. Leland had given a sketchy verbal outline of a plan whereby a pool of money should be created and this could be built up by either the people in the lower income brackets or even in the higher brackets, and from this pool the care of the sick could be financed."

By Mr. Leahy:

Q. Doctor, did you state that the report was finally made to the District Medical Society a couple of days later?

A. I did; July 29, 1937.

Q. I am going to show you on page 34 a motion and ask you if you can identify that for us and explain what it is.

However, I should conclude the paragraph which I just read with reference to Dr. Woodward and Dr. Leland and their visit (reading):

"The secretary stated that the very next morning after the meeting he wrote to Dr. Leland asking for full details of this plan. Up to date he had received no reply. The secretary opined that the American Medical Association authorities certainly did not have any definite knowledge as to how to proceed in combating the situation that was confronting the Medical Society of the District of Columbia.

"The secretary said he was quite sure that he was in accord with everything that Dr. Reed wanted passed. He would make two motions if acceptable to Dr. Reed:

"1. That a special meeting of the Medical Society of the District of Columbia be called for Thursday, July 29, 1937, at 8 p. m.

"2. That a recommendation be made that the president of the Society appoint a special committee to consider the entire matter with a view to bringing accord, if possible, with Group Health Association, Inc.

"In view of the fact that many of the members thought that report should be made back to the Executive Committee Dr. Reed's motion was finally made to the effect that the Chairman of the Executive Committee appoint three of its members to act as a subcommittee, they to add two members of their selection from the Society at large for the purpose of further studying Group Health Association, Inc., with a view of bringing back to the Executive Committee a solution concerning what the Society's attitude should be toward Group Health Association, Inc. and to report to the Executive Committee at its next regular meeting. A motion was made concerning the registered letter that was to be sent out."

That was to a list of organizations, groups and individuals. It was seconded and adopted.

The minutes of the special meeting of the Medical Society of July 29, 1937 (Gov. Ex. 37) set forth the transactions of that meeting.

Defense counsel read from the minutes of July 29, 1937 (Gov. Ex. 37) as follows:

I am not going to repeat the report which I just read to you as the report of Dr. McGovern to the Executive Com-

mittee, which contains what he considered to be and stated as the known facts, some sixteen, which the committee at that time knew about G.H.A. The Executive Committee presented its report, and I am not going to reread that. Then there was discussion by Dr. Thompson; Dr. Hoee, Dr. Sprigg, and then Dr. McGovern was called upon to discuss the question. He stated (reading):

"that he was the chairman of the subcommittee of the Executive Committee that investigated this matter thus far. He brought out the fact that the purpose of this meeting tonight was to inform the membership of the situation and to familiarize them with the facts obtained to date with an idea of turning it over in the minds of the membership and arriving at some conclusion as to how the Society should act in the matter. He felt that it was apparent from the report that the Group Health Association was not willing to 'come clean.' It was specifically stated that Mr. Penniman, its president, refused to comply in writing to an official communication addressed to him from the Society. In that letter four specific requests were made: that they submit copy of any contract they may have between the Group Health Association and the Home Owners Loan Corporation with the Federal Home Loan Bank Board; copy of their constitution and by-laws; and any contract that may be in existence in relation to the members of this corporation; and any other matter that would be of importance to the Medical Society. Dr. McGovern pointed out that the communication was sent by registered mail. Mr. Penniman called him by telephone asking that he have luncheon with him where these matters could be discussed. After consulting with officials of the Society Dr. McGovern accepted the invitation to meet Mr. Penniman at luncheon at the Raleigh Hotel. Dr. McGovern made it emphatic that he was not authorized to commit the Society in any way. Mr. Penniman was willing to give some of the information desired, but when asked for the contract between the Group Health Association and the Federal Home Loan Bank Board, he refused, stating that the Medical Society had no more right to ask for that than they would to go down to Garfinckel's department store and ask to see a contract that the store had with an express company, for instance. Dr. McGovern felt that it was definite that they had some kind of contract and they are not desirous that

anybody should see it. In this connection he would add that the American Medical Association, through Dr. W. C. Woodward, tried diligently, spending a whole day in the building of the Home Owners Loan Corporation, going from office to office, trying to get a glance at the contract, without success. Dr. McGovern felt that the contract itself did not interest the Medical Society as much as it did interest the A.M.A. If there is a connection between the Federal Home Loan Bank Board and the Group Health Association, and the Board is spending money, they are spending taxpayers' money which makes it a national entity. As far as the panel of doctors is concerned, Mr. Penniman said he did not think it was appropriate for the Medical Society to have a list of the panel of physicians who have already been employed. He added that it is a well known fact that members of the Society have been approached. It also is a known fact that doctors have been asked to come in from the outside; that Dr. Brown has talked to them.

"Dr. McGovern said that property had already been leased for the housing of the clinic on I street, between 13th and 14th Streets. There was no doubt in his mind that the lay members of the board of directors of the Group Health Association are thoroughly convinced that they are doing a splendid thing for their employees. He was further convinced that they are not doing anything that might be considered unethical by them.

"Dr. McGovern called attention to an article which appeared in the Evening Star, in which it was announced that Senator Lewis had introduced a resolution in the Senate of the United States to provide medical care for the needy and the stricken with illness, etc."

I will not read the resolution which Dr. McGovern read, because it is not particularly interesting to us at this time. Dr. McGovern continued further with reference to Senator Lewis' speech at Atlantic City, New Jersey, at the convention, and Dr. Willson spoke, and then Dr. McGovern stated (reading further):

"that in the articles of incorporation they are going to give complete medical care and hospitalization. It could not be found out as to how they plan to do that. He pointed out that it is incorporated to include all Federal employees, except Army and Navy. He thought possibly they would have the free use of the local hospitals.

"At this point Dr. Charles E. Fierst, of Silver Spring, Maryland, addressed the Society."

"Dr. H. C. Macatee was recognized. He reiterated the plea of the chairman of the Executive Committee that if any members had ideas on this subject, or information about it, they should submit it to the committee for investigation. He said he would like to express his personal feeling about this matter for whatever value it may have. He was of the opinion that the Medical Society should not take its attitude based on the idea that there are certain scurrilous people who are trying to do a scurrilous thing to the Medical Society and doing it in an underhanded, scheming way. It was his impression, gained from contact with certain individuals, that they are highly intelligent people who have profoundly studied this subject, who are aware of all the social currents flowing through the country with respect to the relation to the medical profession and the people. They are aware of what has been done elsewhere and the results. 'My feeling is that this is a group of responsible, honest, rather public-spirited people, who are undertaking to do something for the benefit of their associates in office. They are convinced and have secured what they call competent legal advice that they are on secure legal ground. They have by reason of their knowledge of similar projects elsewhere become convinced that wherever such organizations spring up they almost consistently receive the antagonism and the animosity of the local medical profession.'

"Dr. Macatee added that he was of the opinion that their desire to avoid publicity in this matter was due to their knowledge of that fact. So far as Dr. Henry Rolf Brown was concerned, Dr. Macatee stated that he has had a distinguished service in the Veterans Bureau where he was highly esteemed. He was retired on account of age and feels that he is not old enough to be put on the shelf. Dr. Brown has been detached from the organized profession for a long time. He (Dr. Macatee) said he for one did not blame Dr. Brown for taking the position.

"Dr. Macatee, continuing, stated that they had evidently obtained advice from the Twentieth Century Foundation and are perfectly aware that similar organizations, such as the Endicott-Johnson Medical Service, which was fought tooth and nail by the County and New York State Medical

Society; also the Ross-Loos clinic of Los Angeles, which was likewise fought tooth and nail by the California organized medicine to the point that the members of that outfit were expelled from membership and then by court order were instated, were in operation. It was because of all these facts that the Executive Committee was recommended that this matter be recommitted for further study as to what will be wise for the membership as well as the public.

"Dr. Macatee added that there is now available a list of corporations and organizations and persons employing physicians in a contractual relationship, prepared under provisions of the constitution and by-laws. He urged the members to take the list and examine it carefully, and familiarize themselves with its contents.

By Mr. Leahy:

Q. Doctor, I want to show you on page 41, the first paragraph thereon, and ask you whether, so far as any knowledge you have is concerned, that is the first information of a Doctor Selders which came to the District Society or any of its members.

A. So far as I know, that is.

Mr. Leahy: That is at the special meeting of July 29, 1937, when Dr. Charles E. Fierst, of Silver Spring, Maryland, addressed the Society (reading):

"He said that last evening he overheard a conversation that took place in one of the drug stores in Silver Spring. A man represented himself as a surgeon of this organization and showed the clerk a list of instruments and equipment procured for a clinic to be opened in the 'Evans Electrical Building.' This man told the drug store employee that any major surgery that would be done would be performed in the local hospitals of Washington. Minor surgery would be taken care of in the clinic. By inquiry of the employee of the drug store, Dr. Fierst stated he obtained the name of this man as Dr. Raymond E. Selders, 2445 15th Street, N. W., Telephone: Adams 5302; that he was formerly from Massachusetts. Dr. Selders applied for a courtesy card at the drug store."

Then there was further discussion by other members with reference to Dr. Macatee's remarks and Dr. McGovern's remarks, and at this point Dr. Sprigg re-read the recom-

recommendations of the Executive Committee as amended, as follows (reading):

"That the chairman of the Executive Committee appoint three of its members to act as a subcommittee, they to add two members of their selection from the society at large, for the purpose of further studying the Group Health Association, Inc., with a view of bringing back to the Executive Committee a solution concerning what the society's attitude should be to the above Group Health Association, Inc., and to report to the Executive Committee, subject to the call of the chairman.

"Duly seconded and adopted."

I was chairman of the committee which was appointed that evening. No other action than the appointment of the committee to study the matter was taken at the July 29, 1937, meeting. The committee functioned until September 27, 1937, when it made its final report.

While I was away on vacation a meeting of the Executive Committee was had on September 8, 1937. Defense counsel read the minutes of the Executive Committee meeting of September 8, 1937 (Gov. Ex. 37) to the jury as follows:

"It was stated that during Dr. Macatee's absence from the city during the month of August, owing to the clamor for action that had been set up by certain society members, it was incumbent upon the committee to hold a meeting. At a meeting which was held in the office of Dr. Thomas A. Groover, it was adopted that Drs. Macatee and McGovern be duly appointed by the Society at large as members of the subcommittee."

The following statement was made as the statement of the committee (reading):

"1. That Group Health Association is unethical and that the participation in it by any member of the Medical Society of the District of Columbia would render him or her subject to disciplinary action by the Society.

"2. Your committee at this time has no definite recommendation to make with respect to combating the activities of Group Health Association other than as embodied by implication in the preceding paragraph.

"3. It is the opinion of your committee that the Medical Society of the District of Columbia should maintain close contact through the chairman of this committee with the American Medical Association in an effort to formulate a suitable and effective policy with respect to combating the activities of Group Health Association.

"It was explained that Dr. Macatee has been duly notified of the committee's activities during his absence and also that it was the desire of the committee to hold a meeting just previous to the meeting of the Executive Committee on this evening. Dr. Macatee had stated over the telephone that this afternoon was very well taken up and it would be impossible for him to be present.

"Upon motion duly seconded the Executive Committee unanimously accepted the report of the subcommittee."

Then Dr. McGovern was called upon to speak, as well as other physicians, and then Dr. Macatee was recognized.

"He summed up briefly his stand in the matter, stating that before accepting the subcommittee appointment he definitely told Dr. Sprigg that he was going to be out of town for the whole month of August, and he thought that someone else should serve. Upon insistence he accepted. He was of the opinion that in view of the committee seeing fit to meet this evening and on other occasions during his absence, and having brought in a report without his presence, that he should resign and that his resignation from the committee should be immediately accepted.

"Dr. Ruffin and others expressed the hope that Dr. Macatee would not deprive the Executive Committee and the Society of his services which were deemed most valuable in the revamping of the report which Dr. Sprigg and others thought should be in such a form as to be suitable to be sent to each member of the Society and Members of Congress as a dignified expression of organized medicine's stand in the protection of the health of the individual.

"Upon motion duly made and finally adopted the committee was to be continued with Dr. Macatee chairman and the report to be made back to the Executive Committee with a statement involving specifically the violations of the Code of Ethics and the reasons for opposition to the group plan on the basis of the health of the individuals who would be subscribers.

"That portion of Dr. Ruffin's proposal which would refer the matter back to the American Medical Association was stricken out.

"Dr. Macatee announced his willingness to continue and do anything within his power to aid the committee."

Then several doctors talked and further instructions were given with reference to other matters which I do not think are of interest here.

Although a report was adopted at the September 8 meeting, the whole matter was recommitted to the committee, and that report was superseded by another report which the subcommittee submitted to the Executive Committee on September 27. The report adopted on September 27, 1937, was the final report of the committee and supplanted the preliminary report made on September 8. The final report read as follows (Gov. Ex. 37):

"At a special meeting of the Medical Society of the District of Columbia held July 29, 1937, the membership was advised of all the facts that the Executive Committee had been able to gather respecting the purposes, proposed methods, and progress of the Corporation composed of employees of the Home Owners Loan Corporation now in process of organization, the object of which is to provide complete medical, surgical and hospital care for its members and their dependents upon a prepayment plan of financial support through membership dues. The professional services offered by the Corporation are to be supplied by a full-time salaried staff of medical and other technical employees. The name of the organization is Group Health Association, Inc., of the Home Owners Loan Corporation.

"The Executive Committee recommended at the special meeting that the Society authorize further study of the subject by the Committee in order to enable it to report suitable recommendations to the Society looking to the formal adoption of an official attitude toward this proposed new type of medical practice.

"Such an expression of the Society's attitude is necessary for the guidance of our membership, both with respect to possible employment by the corporation and with respect to professional relationships to its medical and technical employees when and if it shall have begun to function.

"The Executive Committee finds: First, that employment by or professional relations with the Group Health Asso-

ciation, Incorporated, on the part of our members would be conditional upon approval of the organization by the Society as required by Chapter IX, Article III, section 2, of the Constitution; that no application has been made by any member or by the organization itself for such approval; and that consequently there has been no submission of the data required for approval to the Compensation, Contract and Industrial Medicine Committee of the Society.

"The Committee finds: Second, that the conditions of rendering the medical and surgical service offered by Group Health Association, Incorporated, as set forth in such written promulgations of the organization the Committee has been able to see and as indicated verbally by officers of the corporation, appear to be inconsistent with the criteria for an acceptable form of contract practice as set forth in Chapter III, Article VI, Section 3 of the Principles of Medical Ethics of the American Medical Association, by which we are obliged to be guided. In particular it would appear that at least two of the criteria would necessarily be violated, viz.: '1. Where there is solicitation of patients, directly or indirectly'; and '3. When free choice of a physician is prevented.' In the first instance, it is obvious that the solicitation of employees of the H. O. L. C. to take membership in Group Health Association, Incorporated, is an effort to entice many away from medical relationships already formed to the medical personnel of the corporation. This effort would raise the question whether a further criterion of an acceptable contract is violated, viz.: '4. When there is interference with reasonable competition in a community.'

"However, the criteria above quoted must be applied in the light of experience, and we are required by the same Principles of Ethics to exercise prudence in forming opinions: 'Judgment should not be obscured by immediate, temporary or local results.' In any form or instance of contract practice 'The decision as to its ethical or unethical nature must be based on the ultimate effect for good or ill on the people as a whole.'

"The Executive Committee, therefore, recommends the adoption of the following:

"RESOLVED, That a final expression of the attitude of the Medical Society toward the acceptability of any cooperative medical service organization as an approved agency for the employment of members is manifestly impossible without the submission of all related data as a basis for approval,

and manifestly undesirable when information is lacking as to whether any such group will ever become operative; and

"RESOLVED, That the membership be reminded of the requirements of Chapter IX, Article III, Section 2 of the Constitution for their guidance with respect to Group Health Association, Incorporated, of the H. O. L. C.; and

"RESOLVED, That the Medical Society recognizes a growing desire in Washington for some feasible plan of cooperative group medical service on a prepayment basis; that it recognizes the value of such an arrangement for many people of limited incomes; and that, having already provided a means in the Health Security Administration, for the people without ready money to secure medical service on a postpayment plan, it is willing to collaborate with appropriate, responsible groups to devise methods for group prepaid medical service mutually acceptable to the two essential parties to such an agreement, viz.: the group needing and proposing to pay for the service and the group capable of furnishing it; and

"RESOLVED, That if hereafter it shall appear necessary or desirable, the Board of Medical Supervisors of the District of Columbia be requested to determine, by judicial decision if necessary, whether the operation of Group Health Association, Incorporated, or any similar organization, is or will be in conformity with the Healing Arts Practice Act for the District of Columbia."

"Dr. Macatee, upon concluding reading, stated that the Journal of the American Medical Association would publish in its issue of October 2, 1937, a detailed analysis of the Group Health Association, Inc., pointing out weak points from a legal viewpoint. It began with the statement that Title 5, Chapter 5 of the District Code was taken advantage of, which had to do with the mutual welfare of individuals in organizations. It was clear that the Government was definitely embarking in the insurance business and that the check-off from the Government payroll would have all of the evil points that were included in check-off in the factories for union dues. The American Medical Association's statement would cover 4 or 5 pages in the Journal. It was emphasized that this material was not for release until September 29. Dr. Macatee stated that it was his view that despite this article appearing in the A. M. A. Journal, that there should be no hesitancy in adopting the report of the Subcommittee."

The report was unanimously adopted.

Health Security Administration is an eleemosynary organization which investigates applicants for medical charity and arranges for their hospitalization in clinics, and also provides a means by which they may pay their own way or budget out the expenses of their hospitalization after the services have been rendered. No information, over and above that had previously, was had on September 27, 1937, by the Society, as no communications had been received in any shape or form from any member of Group Health or from any of the members of its Board of Trustees.

The report of September 27, was incorporated in a report of the committee to the Society on its meeting on October 6, 1937. Between the special meeting of the Medical Society of July 29 and the meeting of October 6 nothing was done by the Society with relation to Group Health.

Defense counsel read from the minutes of the meeting of the Medical Society of October 6, 1937 (Gov. Ex. 37) as follows:

"Dr. Sprigg, continuing, stated that for the information of the membership he would report that the Executive Committee met four times during the summer for the purpose of studying questions of the organization which has been featured by the Home Owners Loan Corporation. He pointed out that officials of the American Medical Association lent their aid: Dr. W. C. Woodward, Director of the Bureau of Legal Medicine and Legislation, and Dr. R. G. Leland, Director of the Bureau of Medical Economics, discussed the matter before the subcommittee; and Dr. Olin West, Secretary, discussed the matter with certain members of the Society. All discussing this question were thoroughly opposed to the plan as presented in toto."

And the following resolutions are the results of these deliberations concerning Group Health Association, Inc. And then follows this same resolution which I have read to you. I am not going to take time to read it. Then, upon motion duly seconded, and adopted, the recommendations of the Executive Committee were considered seriatim.

"Dr. Thomas A. Groover was recognized. He stated that if there was no objection he would like to introduce a substitute for the foregoing resolutions. No objections were made. He presented the following:

"WHEREAS, The Bureau of Legal Medicine and Legislation of the American Medical Association has prepared and

published a comprehensive report on the activities of Group Health Association, Incorporated; and

"WHEREAS, The Medical Society of the District of Columbia is in full accord with the content of said report, both as to the established facts set forth therein and the implications drawn therefrom; therefore, be it

"RESOLVED, That the Medical Society of the District of Columbia cause a copy of said report to be sent to each of its members as an indication of its future policies with respect to combating the activities of said Group Health Association and also with respect to the ethical responsibilities of the Medical Society of the District of Columbia and of its individual members.

"Dr. Groover moved the adoption of these substitute resolutions. Seconded by Dr. F. X. McGovern.

"In discussion of the subject, Dr. Groover stated he wished to briefly state some of his reasons for proposing these substitute resolutions. He said:

"I wish briefly to state some of my reasons for proposing these substitute resolutions.

"I have grave doubts if this Medical Society alone can do a great deal toward combating Group Health Association, Incorporated, and believe that the most effective assistance and support it can invoke is that of the American Medical Association.

"The A. M. A. has manifested a keen interest in this problem and in the October 2nd issue of the Journal has caused to be published a comprehensive survey of it which I trust many of you read carefully.

"If you have, you must have noted that there are three dominant notes that run through it—the first being that Group Health Association is illegal; the second, that Group Health Association is unethical; and third, that the operation of Group Health Association would be inimical to the best interests of the medical profession and the public.

"As to the illegality of Group Health Association I am not personally qualified to speak, but I happen to know that the A. M. A. has made a careful study of this aspect of the question and it is their opinion that it is illegal. It would seem out of place at this time for this Society to commit itself to any plan of procedure such as that recommended by the Executive Committee in the event that legal action against Group Health Association is undertaken

later. Obviously any plan of procedure should be contingent upon the advice of counsel.

"As to the ethical responsibilities of the Medical Society of the District of Columbia and its members the conclusion to be drawn from the A. M. A. report is inescapable. It says: 'Physicians who sell their services to an organization like Group Health Association for resale to patients are certain to lose professional status.' In contrast to this clear-cut statement the statements in the Executive Committee report are equivocal and quibbling for which I can find no justifiable excuse. The members of this Society I believe have a right to expect a definite unequivocal expression from the Society as to their ethical responsibilities which is lacking in the Executive Committee report.

"Finally it is the collective opinion of organized medicine that prepayment plans for medical care except under very special conditions are inimical to the best interests of the medical profession and the public. The quasi endorsement of any prepayment plan for a community like Washington as contained in the Executive Committee report might well alienate the support of the A. M. A. and prove disastrous to its influence and leadership. For these and other reasons which I will not go into I believe that any such commitment by this Society might very well prove to be exceedingly embarrassing."

Dr. Groover's substitute motion was adopted. The subcommittee of which I was chairman ceased to exist as its duties had been completed. Up to October 6, 1937, the Medical Society had taken no action other than is indicated in the minutes.

Q. Up to the meeting of October 6, 1937, what expression of an attitude of the Society had ever been adopted?

A. On June 1st the Executive Committee authorized the appointment of a subcommittee to find out facts; on June 24th a meeting with the officers of Group Health Association was had at the Medical Society Building to elicit facts; on July 26th a further meeting was had with the Board of Trustees of Group Health Association for further conference in the hope of reaching some accord with them. On July 29th all the facts obtained were submitted to the Medical Society at a special meeting, and the only action taken was the appointment of another committee to formulate a

policy for the Society to adopt officially; on October 6th, the Medical Society did adopt a policy as contained in the resolution presented by Dr. Groover. Those were the only actions taken by the Medical Society between those dates.

Mr. Leahy: I should like to draw the attention of the jury to one statement which is made on page 4 of the minutes of the meeting of October 6th, wherein after Dr. R. Arthur Hooe had been recognized he said:

"He referred to the constitution of the Society, as mentioned in Dr. Macatee's resolution, stating that there is a provision therein which makes it utterly impossible for a member of this society to engage with any corporation, group or individual without first submitting its verbal or written contract to the Compensation, Contract and Industrial Medicine Committee. He said when this fact was disclosed to the Group Health Association officials, their verbal reply was 'if that makes it impossible, if it is in violation of the ethics of the American Medical Association and your ethics, then why don't you and the American Medical Association change your ethics.' Dr. Hooe said the reply naturally was: 'Because you haven't sufficiently convinced us that we should change them with any good reason.' "

Mr. Leahy: And then there was a long speech by Dr. Horback, with which Dr. Hooe said he was in accord.

By Mr. Leahy:

Q. Now, Doctor, do you recall whether following the meeting of October 6th, and the adoption of this particular report of Dr. Groover, anything further was done in reference to Group Health Association during that month of October, 1937?

A. I know of nothing, sir.

Defense counsel read from the minutes of the Executive Committee meeting October 11, 1937 (Gov. Ex. 37) as follows:

"The recommendation was finally adopted that the American Medical Association authorities be communicated with and they also be asked to send to the Insurance Commissioners, the Commission on Licensure, the District of Co-

lumbia Commissioners, the United States District Attorney for the District of Columbia, and the Corporation Counsel, substances of the article that appeared in the October 2, 1937, issue of the Journal of the American Medical Association (organization section; p. 39B), and that if the American Medical Association refused or would not comply, then the Secretary send a reprint of said article to each of these officials."

Defense counsel read from the minutes of the meeting of the Medical Society of October 15, 1937 (Gov. Ex. 37) as follows:

At this particular meeting, according to the minutes which I am not going to read—because they deal with so many other matters, and so many doctors spoke—Dr. Wall, Dr. Sprigg, Dr. Jansen, Dr. Conklin, Dr. Hooe, Dr. Jacobs, Dr. Kirby, Dr. Holden, Dr. Hagner, Dr. Riddick, Dr. Davis, Dr. Sager, Dr. Chase, Dr. Christie, Dr. McLean, Dr. Parker, Dr. Alfaro, Dr. Templeton, Dr. Hooe, Dr. Groover,—until we come down to the seventh page of the minutes.

"Dr. W. M. Sprigg asked consent to read a letter addressed to the Boards of Directors of the various hospitals in the city. Consent was granted."

That letter is dated October 15th. He read the letter. He called attention to Chapter IX, Article 4, Section 1. The result of the action as to sending the letter was that the matter was held over, as I recall.

Mr. Lewin: Mr. Leahy, didn't he also refer to Section 5?

Mr. Leahy: Did he?

Mr. Lewin: Didn't he start out with Section 5 and quote it?

Mr. Leahy: "The Medical Society of the District of Columbia desires to call your attention to Chapter IX, Article IV, Section 5, of the Constitution as follows", quoting it; and that matter was held over for further discussion. This was at the meeting of October 15, 1937.

Defense counsel read from the minutes of the Medical Society meeting of November 3, 1937 (Gov. Ex. 37) as follows:

This is November 3rd. There are many things in here which have no relation whatsoever to the matter at hand. On the bottom of page 2; however, Dr. Sprigg, Chairman of the Executive Committee, was recognized. He presented

the following recommendation from the Executive Committee, which is the one I just drew your attention to, to the effect that the American Medical Association authorities be communicated with and asked to send to the various public officials of the District of Columbia substances of the article which appeared in the October 2nd, 1937, issue of the Journal. Dr. Sprigg made the motion that the recommendation as read be adopted. No. 1 I have just brought to your attention. Second, Dr. William J. Stanton was then recognized and he offered a substitute for the recommendation of the Executive Committee. Now, that is a long resolution and insomuch as it was not adopted I will not take your time to read it.

Motion was made that the foregoing resolution be adopted, and it was seconded. Then there follows a long discussion between Dr. Stanton, Dr. Sprigg, Dr. Smith—

“Resolved, That the Executive Committee of the Medical Society of the District of Columbia is hereby authorized and directed to take such steps as may be necessary, first, through the American Medical Association and if that fails, second, through its own initiative to inaugurate a program of information through the state medical associations and other sources of the dangers of lowering the standards of medical care to be given government employees in the Home Owners Loan Corporation organization and other government agencies as found in the rules of the Group Health Association, Inc., and many other reasons why it is contrary to sound public policy.”

Then follows another discussion between Dr. Sprigg, Dr. Stanton, Dr. Prentiss Willson, Dr. Hooe, Dr. Caulfield, Dr. McLeod, Dr. Wilkinson, Dr. Sager, Dr. Christie, Dr. Ruffin, Dr. Stanton again, and Dr. Willson's motion was finally adopted. That motion was that a committee should be appointed to retire to draw up a resolution. The committee appointed was Dr. Stanton, Dr. Ruffin, and Dr. McGovern.

“Later in the evening Dr. Stanton made the following report of the committee's deliberations, presenting the resolutions:

“That the President of the Medical Society of the District of Columbia appoint a committee of two members to go to Chicago, as promptly as practicable and lay before

the proper officials, of the American Medical Association the views of this Society with regard to the activities of Group Health Association, Incorporated, including:

"1. That inasmuch as the movement threatens to be nation-wide in its scope, and affect every component organization of the American Medical Association, it is the duty of the American Medical Association to oppose immediately with all its might this entering and possibly illegal wedge to the socialization of medicine.

"2. That in view of the tremendous import of the Group Health Association movement to the membership of the Medical Society of the District of Columbia and also to the profession at large and to the public, it is the opinion of the Medical Society of the District of Columbia that it is the duty of the American Medical Association to combat vigorously Group Health Association, Incorporated."

"3. That the Medical Society of the District of Columbia waives any question of regional interference by the American Medical Association.

"4. That the American Medical Association give a definite and immediate expression of its intended action in this matter.

"Upon motion, duly seconded, the foregoing resolutions submitted by the special committee were adopted."

I do not know of any other action taken at the November 3rd meeting other than to authorize Doctors McGovern and Hooe to go to Chicago and see the AMA.

Defense counsel then read from the minutes of the Medical Society meeting of November 3, 1937 (Gov. Ex. 37), as follows:

Now, at that same meeting of November 3rd, 1937, there was another resolution adopted which I wish to draw the attention of the jury to. Oh, there were many offered; much talk—until we come down to the twelfth page.

"Dr. Prentiss Willson would inquire if the foregoing was in lieu of the recommendation concerning the sending of a letter to the Board of Directors and medical staffs of the local hospitals, as published through the membership on the agenda."

That is the Dr. Sprigg letter I called attention to at the earlier meeting.

"He said he intended to move a substitute motion for the letter which appeared on the agenda. If the Society approved the motion proposed by Dr. Sprigg it would be inexpedient to send the letter out at the present time. He was of the opinion that the Hospital Committee, composed of members of the Society serving on hospital staffs in Washington would be a more suitable committee to handle the matter. He offered the following substitute:

"Whereas, the Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc., if it can prevent patients of physicians in its employ being received in the local private hospitals; and

"Whereas, the Medical Society of the District of Columbia has no direct control over the policies of such hospitals as determined by their lay boards of directors, except through its control of its own members serving on their medical staffs; and

"Whereas, Conflicts between the Medical Society of the District of Columbia and any local hospitals arising from an attempt to enforce the provisions of Chapter IX, Article IV, Section 5, of its Constitution should be assiduously avoided, if possible, because of the unfavorable publicity that would accrue to its own members; therefore, be it

"Resolved, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals in such a manner as to insure the maximum amount of practical accomplishment with the minimum amount of friction and conflict."

Mr. Leahy: This was afterwards adopted; the minutes show it was adopted, and the matter referred to the Hospital Committee.

The Sprigg letter, which this resolution was presented in order to supplant, was not sent as the Willson resolution stopped it. I have been connected with the Washington hospitals for forty-one years.

Q. Have you any knowledge now of any acts done by the District Medical Society in any attempt to control the policies of any hospital in the District of Columbia; other than what is disclosed in the minutes of the meetings of the District Society, as read?

The Witness: Nothing was done by the Medical Society other than as disclosed by the minutes.

The Medical Society never on any occasion undertook to do anything to interfere with the reception by the local hospitals of patients arising from Group Health.

I have been connected with Garfield Hospital since 1900, and ever since I have been connected with its staff it has had a rule that only those who have been given privileges can exercise and practice their profession within the hospital, and the same is true of the other Washington hospitals. The general considerations that apply to the granting of hospital privileges I will outline as follows:

There is required a formal application by any physician who desires courtesy privileges, stating his name, scope of his education, training, and special aptitude, giving references to those who personally know his attainments as endorsers. This material is referred to that section of the medical staff involved in the type of practices as to which the applying physician desires courtesy privileges, and upon their opinion is based the answer of whether or not the application will be endorsed, and it is a rule that all members of the attending staff must endorse the application. The application then comes to the advisory committee, of which I am chairman, whereupon these facts are considered, and that committee recommends to the board of directors the appointment to the courtesy staff of the applicant or not. The board of directors then takes its own independent action on the matter, and the ultimate appointment depends upon the board of directors.

In Garfield Hospital from January, 1937, to December 20, 1938, there has been no change in the policy of the hospital with respect to an applicant being a member in his local medical society, but the fact of membership stands as a substantial bit of evidence concerning his acceptability, but his nonmembership is not a bar to courtesy privileges in Garfield Hospital, and there were other than local Society members on the Garfield staff at that time.

While I was at Garfield Hospital Dr. Raymond E. Selders made an application for privileges shortly after Group Health came into operation, or about November or December of 1937. The application took the same route of any other application. Dr. Selders was given temporary privileges under the rule that an applicant would be given such privileges pending action on his application, and his application finally was denied by the Board of Directors. In granting Dr. Selders privileges during the period his application was pending we followed the general rule applicable to all applicants.

On January 25 of 1938, on a report from the surgical staff, Dr. Selders' temporary privileges were withdrawn.

Gov. Ex. 485 has come to my attention since its date, December 3, 1937, but I know nothing of its origin. I do not recall the contents of Gov. Ex. 487. Action was taken by the Board of Directors at a meeting at which I was present on March 28, 1938. The letter correctly sets forth the action which was taken.

Defense counsel read Gov. Ex. 487 to the jury as follows:

The letter is U. S. Exhibit No. 487 dated December 28, 1937, from Dr. Eisenman, Superintendent, to Mr. Aspinwall, and it says (reading):

"That pending the settlement of the question as to the ethical status of Group Health Association, Inc., and pending further study of the professional qualifications of Dr. Raymond E. Selders that he be not accorded courtesy privileges at Garfield Memorial Hospital except, of course, in a real emergency."

That is the meeting of the board of directors of March 22, 1938. (Reading):

"The president, in reviewing the proceedings, stated:

"Our final connection with Group Health Association was the application of Dr. Selders for surgical privileges. The temporary privilege awaiting action on the application and the withdrawal of these privileges on recommendation of the Medical Staff as noted in the resolution of the Executive Committee meeting on December 28, 1937, awaiting legality of Group Health Association. The actual disqualification of Dr. Selders' application was by the board of directors at meeting on January 25, 1938, in which the min-

utes of the Executive Committee meeting of December 28, 1937, were read.

"In approving these minutes the board desires to state that in denying privileges to the courtesy staff of the hospital to Dr. Raymond E. Selders on the recommendation of the Medical Staff of the Hospital the action was pending the legality of the organization who employed Dr. Selders."

The witness was removed from the stand for the identification of an exhibit (Def. Ex. 42).

WILLIAM RICHARDS CASTLE, a witness for the defendants.

Direct examination:

I have resided in Washington since 1918. I was employed first in the Red Cross for a year, and then in the State Department from the beginning of 1919 until 1933. I was in the European Division of the State Department for a while, and then I was Assistant Secretary and finally Undersecretary of State, and I recognize the letter marked Def. Ex. 42 as on my stationery and bearing my signature; I personally forwarded this letter to the addressee, Dr. Eisenman, but I do not have any other correspondence in relation to this letter. I thought it was of no importance at the moment and threw it away.

DR. HENRY C. MACATEE, a witness for the defendants.

Direct examination—resumed:

A letter marked Def. Ex. 42 came to my attention as a member of the Board of Directors of Garfield Hospital. Dr. Selders was never afforded privileges at Garfield Hospital except temporary privileges until his application was denied officially. The Castle letter (Def. Ex. 42) had a definitely adverse effect upon the Board of Directors' determination with reference to whether or not Dr. Selders was qualified for privileges at Garfield Hospital. Mr. Castle was a member of the Board of Directors of Garfield Hospital.

Def. Ex. 42 received and read to jury as follows:

This is on the stationery of W. R. Castle. It is dated March 30, 1938, and addressed to Dr. Francis J. Eisenman, Garfield Hospital (reading):

"MY DEAR DR. EISENMAN:

I wrote as I told you I would to Mr. Aldus Higgins in Worcester. He is the president of the Norton Company, is connected with various hospitals, and is, I believe, head of the Worcester Museum. Mr. Higgins is a very careful individual who would not write anything which he had not checked on pretty carefully. This is what he said:

'Dr. Selders was a surgical resident at Worcester City Hospital for one year, two years ago, at a salary of \$900 and keep. We understood that he had graduated from a medical school in Oklahoma, had been in practice about seven years, and part of the time in Houston, Texas, where he had a hospital staff appointment. He then came to Pennsylvania State Medical School to take their P. G. course which requires one year at the school and one year of practical experience as a resident. His year at the hospital was a part of this procedure. His work at the City Hospital did not meet with the approval of the Superintendent as to the way he handled himself with internes, nor the approval of the surgical staff as to his accomplishments as a surgeon. The appointment accordingly was not continued after the first year.

'Our superintendent has a letter from one who claims to be his sister living in the South with the statement that she made sacrifices to educate Dr. Selders and that recently when she had turned to him for aid in her financial circumstances he had informed her that he did not care to hear from her again.'

Mr. Higgins adds that it is quite possible he may be able to get some more detailed information by consulting the doctors who knew him. He says, however, that it seems as though the above for the accuracy of which he vouches, would be bad enough to dispose of him both as a surgeon and a man.

If you would like me, however, to write Mr. Higgins and ask him to make further inquiries, I shall of course be glad to do so. We ought to realize, however, that if that

is done and Mr. Higgins consults various people, the inquiries are likely to be known.

Very sincerely, William R. Castle."

I remember the case of Miss Tew, as it came up for report and discussion in the advisory committee at Garfield Hospital, of which I am chairman. I prepared a document on the case on March 25, 1938, which I identify as Def. Ex. 43.

Def. Ex. 43 received and read to jury as follows:

"Regulation governing admission of patients to Garfield Memorial Hospital upon the application of physicians and surgeons not members of the courtesy staff.

The word 'emergency' is defined for the purpose of the use of the facilities of the hospital by physicians and surgeons not admitted to the courtesy staff of the hospital as some condition in which the life or safety of the patient is in danger except for some immediate intervention by the physician involved in the way of first aid, as in the case of hemorrhage, asphyxiation, or the like. In cases in which there is time for the formal posting of an operation the hospital holds that there is also time to secure the services of a surgeon who had been granted surgical privileges at the hospital, and that course of action will hereafter be required upon application for the admission of any patient by a physician or surgeon not of the courtesy staff.

Under the conditions stipulated members of Group Health Association will be admitted to the hospital just as any other person is admitted, subject to available space and the suitability of the patient in other respects.

Unanimously adopted by the Executive Staff at a special meeting held March 25, 1938.

H. C. Macatee, M. D., President, Medical Staff."

The original of this paper was sent to Mr. Aspinwall, President of the Board of Directors, on March 25, 1938.

The occasion of defining the word "emergency" was the admission of the Group Health patient Miss Tew into the hospital on the statement of Dr. Selders that it was an emergency case, when the staff took the position that it was not an emergency case. The purpose of the definition was to make the position of the hospital officially known.

to all concerned in such cases, so that no such question would arise thereafter. Under the rule of Garfield Hospital one who did not enjoy courtesy privileges could treat an emergency case, and the purpose of the definition was to define and make clear what such an emergency case was.

After Justice Bailey's decision Garfield Hospital received two applications from members of the staff of Group Health some time in December of 1938. In passing on these applications there was no delay in the hospital beyond the necessary for the orderly process by which such applications were received and acted upon, with the result that the two applicants were admitted to courtesy privileges some time in December of 1938.

When Garfield Hospital receives requests for general surgical privileges on the courtesy staff, it avails itself of the facilities of the Washington Academy of Surgery, and it has been doing this for about ten years. In Dr. Selders' case his qualifications for surgical privileges were referred to the Washington Academy of Surgery, and that procedure was entirely in accord with the usual practice.

Gov. Ex. 450, dated January 31, 1938, which was a report from the Washington Academy of Surgery to the superintendent of Garfield Hospital, was then read to the jury, reporting that the Committee on Hospital Privileges recommended the disapproval of the applications of six doctors, including Dr. Selders, to do surgery, and then recommended the approval of about 45 others in various fields of surgery. Four of the doctors who were disapproved for surgical privileges were members of the District Medical Society. The principal minority report or report No. 1 of the Committee on Costs of Medical Care was approved by the American Medical Association. I made the motion for its adoption by the AMA, I think, in the year 1936. The principal minority report of the Committee on Medical Care (Def. Ex. 45) was then read to the jury, as follows:

"I. The minority recommends that government competition in the practice of medicine be discontinued and that its activities be restricted (a) to the care of the indigent and those patients with diseases which can be cared for only in governmental institutions; (b) to the promotion of public health; (c) to the support of the medical departments of the Army and Navy, Coast and Geodetic Survey, and other government services which cannot because of their

nature or location be served by the general medical profession; and (d) to the care of veterans suffering from bona fide service—connected disabilities and diseases, except in the case of tuberculosis and nervous and mental diseases.

“II. The minority recommends that government care of the indigent be expanded with the ultimate object of relieving the medical profession of this burden.

“III. The minority joins with the Committee in recommending that the study, evaluation, and coordination of medical service be considered important functions for every state and local community, that agencies be formed to exercise these functions, and that the coordination of rural with urban services receive special attention.

“IV. The minority recommends that united attempts be made to restore the general practitioner to the central place in medical practice.

“V. The minority recommends that the corporate practice of medicine, financed through intermediary agencies, be vigorously and persistently opposed as being economically wasteful, inimical to a continued and sustained high quality of medical care, or unfair exploitation of the medical profession.

“VI. The minority recommends that methods be given careful trial which can rightly be fitted into our present institutions and agencies without interfering with the fundamentals of medical practice.

“VII. The minority recommends the development by state or county medical societies of plans for medical care.”

Cross-examination.

By Mr. Lewin:

I was president of the staff of Garfield Hospital in the fall of 1937. The system of chiefs of staff does not prevail at Garfield, so a letter addressed to the chief of staff ordinarily would most likely come to me as president of the staff. Dr. Selders' application made on November 10, 1937, was referred to my committee. Dr. Selders' application disclosed his degrees in medicine and science, that he was a graduate of the University of Oklahoma Medical School in 1927; he was 40 years old, a member of the AMA and of the Harris County Medical Society; that he had had some teaching experience at the University of Oklahoma

and at various hospitals in Texas and at the Worcester City Hospital; that he had had courtesy staff privileges at various hospitals, including St. Joseph's Infirmary, the Methodist Hospital, and the Memorial Hospital in Houston, Texas; that he had contributed to medical literature and gives as references the names of three persons: United States Senator Lee of Oklahoma, Dr. Walter E. Lee, a surgeon of Philadelphia, and Dr. John T. Moore, of Houston, Texas.

I did not communicate with any of Dr. Selders' references and I do not know whether any members of my committee did or not.

Q. Now, Dr. Macatee, isn't it true that following receipt of that application you received a letter from Dr. Conklin, the secretary of the Medical Society of the District of Columbia, addressed to the chief of staff of Garfield Memorial Hospital, dated December 2, 1937 (Gov. Ex. 498)?

A. I have no independent knowledge of that letter.

Q. Such a letter as that is in evidence, Dr. Macatee, and it is addressed to the chief of staff. Would you ordinarily receive it?

A. Yes.

Q. And didn't it include a resolution adopted by the District Medical Society on December 1, 1937?

A. It did.

Q. And didn't that tell you this: that the District Medical Society has resolved, as a matter of educational policy, it strongly recommended that all hospitals, including yours, engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire staffs, both the regular staff and the courtesy staff; that each member of that staff be a member of the American Medical Association and of the local societies here either in Washington or in near-by states?

Do you want to refresh your recollection? (Handing Gov. Ex. 498 to the witness.) Is that correct?

A. I didn't understand it was addressed as a question. That is the purport of the resolution.

Q. Yes. And wasn't that resolution taken up at the advisory committee of the medical staff of Garfield Memorial Hospital on December 6, 1937?

A. It was.

Q. And were you present at that time?

A. I don't know. There's nothing in that to—

Q. If you were, you would be the presiding officer, would you not?

A. I would, yes.

Q. And you would ordinarily be present at such meetings, would you not?

A. I would.

Q. Well, isn't it a fact that the secretary was directed by the advisory committee to reply to the communication that I just showed you from the District Medical Society?

A. That is what the minutes show.

Q. Yes. And wasn't the secretary a defendant in this case, Dr. F. X. McGovern?

A. He was.

Q. Yes. And as a matter of fact didn't he reply to Dr. Conklin by his letter dated January 3, 1938 (handing Gov. Ex. 484 to the witness)?

A. That exhibit indicates that he did, yes.

Q. And didn't he say that in reply to that letter, and enclosing the resolution, that he had been requested to advise Dr. Conklin and the Medical Society that the present policy in force at Garfield Hospital is in conformity with the provisions of that resolution?

A. That's what the letter states.

Q. That's what the letter states. And as far as you know, there is no question but that it states the correct fact; isn't that so?

A. Not with the emphasis on "present," as you put it.

A. Oh, really? Well, now, I thought I understood you to testify that you hadn't made any change with regard to that policy at Garfield Memorial Hospital throughout the two years 1937 and 1938.

A. That's my recollection of the fact.

Q. Is the defendant Warfield a member of your medical staff?

A. He is.

Q. Yes. Well, let me show you what purports to be his answers to a questionnaire given him by a committee of which he was chairman, a hospital committee of the District Medical Society, and see if this refreshes your recollection (Gov. Ex. 302):

"Question 8. Does your hospital require membership in the Medical Society of the District of Columbia as a qualification for appointments to its medical staff?"

And his answer, "Yes, or have applied."

A. That is the answer given there.

Q. Yes. And is that correct?

A. It is not.

Q. Question 9 is, "What percentage of the entire medical staff of your hospital are members of the Medical Society of the District of Columbia?"

And his answer is, "Over 75 per cent. All recent appointments."

That is the answer, isn't it?

A. That's the answer given there.

Q. Does that refresh your recollection that on or about that time, although only 75 per cent were then members of the District Medical Society, all recent appointments were required to be members?

A. That does not refresh my recollection.

Q. Would you deny that that was the fact?

A. I do.

Q. Would you deny that about this time, after the receipt of the resolution of the District Medical Society, you changed your policy to require all new, recent appointments to apply for membership in the District Medical Society?

A. Not within my recollection.

Q. It's simply a question of your recollection, is it?

A. Yes.

Q. Isn't it true also that Dr. Warfield, in answer to the question, "Is your hospital in sympathy with the policies of the Medical Society of the District of Columbia?" replied "Yes"?

A. That is his answer.

Q. And wasn't he speaking with regard to Group Health Association when that answer was made?

Mr. Leahy: I object. It calls for a conclusion of the witness.

By Mr. Lewin:

Q. And the policies of Group Health Association as appearing in the first question?

Mr. Leahy: I object.

The Court: Well, I don't know what the paper states, Mr. Lewin.

Mr. Lewin: Would you like to see it?

The Court: Unless this gentleman had something to do with the making of that paper or authorized the making of it, or something like that, I do not see how he is bound by that.

Mr. Lewin: No, I didn't mean to bind him. I was wondering if I might refresh his recollection as to these facts.

The Witness: I have no recollection of the paper.

By Mr. Lewin:

Q. Well, have you any recollection of the fact that your hospital was then in sympathy with the policies of the District Medical Society with regard to Group Health Association?

A. I couldn't make that statement then or now.

Q. Now, isn't it true that the superintendent of the Garfield Memorial Hospital referred Dr. Selders' application which I have just shown you to the Committee on Surgical Privileges (Gov. Ex. 485)?

A. Yes.

Q. And I believe you said that committee included Dr. Carr and Dr. McGovern and Dr. Charles Stanley White and Dr. Strine; am I correct?

A. Yes.

Q. Now, didn't he say, when he submitted this to them for their opinion, that "This," speaking of Selders' application, "is not a 'Run of Mine' case, and your action may be far-reaching. Information shows him"—that is Selders—"to have sufficient training for personal recognition, when compared with many now approved for courtesy privileges at Garfield Memorial Hospital. He is a member in good standing in A. M. A., County and State Medical Societies in Texas, and was returning from Massachusetts to Texas when offered the position with H. O. L. C."?

Doesn't he also say that "Should your recommendation be adverse, for other than personal qualifications, request they be stated, in order that the Board of Directors might have the benefit of your advice and counsel"? Am I correct?

A. That is what the letter states.

Q. Yes. Now, didn't you know that that had been done?

A. I did not.

Q. Was the surgical service, as far as you know, authorized to pass on this applicant for anything other than his personal qualifications?

A. My answer is that there is no regulation which directs the surgical service how it shall reach its conclusions with regard to applications.

Q. So if such a report were referred to you, you would think that you had the right to take into consideration anything whatever in addition to the man's personal standing or his professional capacity and qualifications?

A. I would think from that letter that I was put on notice to be especially careful to look into his qualifications fully.

Q. And you would think you were put on notice to do that because of his connection with Group Health Association, wouldn't you?

A. At that particular time I would think so, because of the very strong and very bitter publicity directed at the hospitals in the public press of this city.

Q. Now let me ask you whether Dr. McGovern, the secretary to your advisory committee, wasn't authorized and did not reply to Mr. Aspinwall with regard to this application of Dr. Selders.

A. He did.

Q. Now, was he speaking for the advisory committee of the medical staff when he so wrote?

A. He was.

Q. Therefore he was speaking for you, wasn't he, among others?

A. I am presiding officer of the advisory committee, without vote.

Q. And would you say he was speaking for you or he was not?

A. He was speaking for me because I was in sympathy with the action of the advisory committee.

Q. He was?

A. I think it was taken on good grounds.

Q. Yes. And were you in sympathy with the reasons which Dr. McGovern said prompted that resolution?

A. I was.

Q. All right. And wasn't this the resolution: "That pending the settlement of the question raised as to the ethical status of Group Health Association, Inc., and pending further study of the professional qualifications of Dr. Raymond E. Selders, that he be not granted courtesy priv-

ileges at Garfield Memorial Hospital, except of course in a real emergency"??

A. That is correct.

Q. Now, there you were delaying action pending the ethical status not of Dr. Selders but of the organization to which he belonged; am I correct?

A. That is one statement.

Q. Yes. And isn't this the reason that was given for it: "The reason prompting this recommendation is the fact that Group Health Association, Inc., a lay corporation, is considered unethical by the Medical Society of the District of Columbia, and its legality is being questioned"? Is that right?

A. That is the statement of the letter.

Q. Yes. And isn't it a fact within your knowledge that it was then considered unethical by the Medical Society of the District of Columbia?

A. That is true.

Q. Does not the reason continue that "Dr. Selders has been hired by Group Health Association as its surgeon. It is the opinion of the Advisory Committee that if the Garfield Hospital allows Dr. Selders courtesy privileges that it would be placed in the light of aiding and abetting Group Health Association, Inc."?

A. That is what the letter states.

Q. And that was your reason, was it not?

A. Yes.

Q. And that was your reason, although you had not yet communicated with Dr. Selders' references or heard any report on his professional qualifications?

Mr. Leahy: Now, wait a minute. That is a double-barreled question.

Mr. Lewin: All right, let us take it step by step.

Mr. Leahy: What do you mean by one? and then we'll get it.

By Mr. Lewin:

Q. At that time you hadn't communicated with his references, had you?

A. Indirectly we had.

Q. You mean you referred it to the Washington Academy of Surgery?

A. I do.

Q. When did you do that?

A. I don't know.

Q. Well, did you do it before or after this letter?

A. The rule was to require them—the applications as they came in.

Q. Did you refer it to the Washington Academy of Surgery on December 6, 1937 (exhibiting a photostat to the witness)?

A. We did.

Q. And had you heard from the Washington Academy of Surgery?

Mr. Leahy: Now, pardon me. Would you just give me the date of the letter you are referring to, Mr. Lewin?

Mr. Lewin: Yes, I will give you both references. The reference was December 6, and the letter I have examined him about was December 17.

By Mr. Lewin:

Q. Had you had any response from the Washington Academy of Surgery at that time?

A. The response from the Washington Academy of Surgery would come to the surgical group of the staff and not to the advisory committee.

Q. As a matter of fact, didn't the response from the Washington Academy of Surgery—Would you give it to me, please (addressing Mr. Leahy)?

Wasn't it as a matter of fact dated January 31, 1938? (Gov. Ex. 450-A).

A. That is the date given.

Q. So the reason which you advised the president of the hospital that to approve Selders would be aiding and abetting Group Health Association antedated this letter by over a month; am I correct?

A. Yes.

Q. And did the Washington Academy of Surgery give you any grounds for recommending against Dr. Selders' application? Will you gaze at that letter again and see whether it discloses any reasons at all?

A. That letter gives no grounds.

Q. Now, as a matter of fact, before you received any word from the Washington Academy of Surgery your board of directors on January 25 had already withdrawn Dr.

Selders' temporary privileges and denied him courtesy privileges; isn't that correct?

A. On two grounds recommended to them.

Q. Yes. On two grounds. And that was six days before you got any report about his qualifications; am I right?

A. Yes, because there were other sufficient grounds.

Q. Yes. And weren't those grounds the grounds recommended by the medical staff?

A. They were the grounds recommended by the medical staff.

Q. Yes. And wasn't the action of the District of the directors predicated upon the recommendation of the Medical Staff?

A. It was.

Q. And didn't Dr. Eisenman so tell Dr. Selders (handing Gov. Ex. 348 to the witness)?

A. He did.

Q. And isn't it true also that before you received any reply from the Washington Academy of Surgery your president had received a letter from the president of Emergency Hospital asking for an explanation for the admission of Miss Sara Abbott to the Garfield Memorial Hospital (handing Gov. Ex. 475 to the witness)?

A. That letter is not within my knowledge until you exhibit it here.

Q. You never had any knowledge of that?

A. I never had any knowledge of it.

Q. Did you have any knowledge of President Aspinwall's reply giving the explanation?

A. None.

Q. Did you know that copies of both those letters were sent to the District Medical Society at the time they were written?

A. I did not.

Q. Now, the Castle Letter (Def. Ex. 42) which was offered this morning was dated March 30, was it not?

A. Yes.

Q. And at that time the Board of Directors had turned down Dr. Selders on January 25?

A. It had.

Q. And it denied him even temporary privileges; is that correct?

A. It had.

Q. And at that time also your medical staff had met in March and had confirmed that action, had it not?

A. The medical staff does not confirm the action of the Board of Directors.

Q. Well, didn't you go along with that action in March of 1938?

A. The Board of Directors having acted, the medical staff had nothing further to do with it.

Q. Didn't the medical staff consider it again in March of 1938?

A. I have no recollection of it.

Q. On February 2, 1938, did not the Medical Staff meet (handing the witness a paper)?

A. What is this document?

Q. These are my notes. Do they refresh your recollection?

A. Only to the extent that that would be about the time when the Medical Staff would normally meet.

Q. Did you not attend that meeting?

A. I could not tell you at this late date.

Q. Did you not present information there with regard to Dr. Selders' application?

A. My recollection would have to be refreshed.

Q. All right. Here is a photostatic copy of the minutes themselves. Will you look at them and see whether or not they refresh your recollection?

A. All right.

Q. Is it not true that when Miss Tew was admitted to Garfield Memorial Hospital for a short time in February of 1938 Dr. Selders then had privileges to bring a person there in an emergency?

A. He had, and he might still have.

Q. Is it not true that at that time you had no formal definition of an emergency?

A. That is true.

Q. Is it not true that at that time you relied upon the judgment of the surgeon bringing the patient as to whether or not it was an emergency?

A. I could not unqualifiedly answer Yes to that, sir.

Q. Would not the judgment of the attending surgeon ordinarily be the criterion of admission of an emergency case?

A. If he had courtesy privileges.

Q. Suppose he did not have.

A. That would not be the criterion.

Q. Suppose he had privileges to bring a patient there in an emergency?

A. He would in an emergency.

Q. I ask you again, did you have any rules or regulations governing the definition of an emergency at that time?

A. None governing the definition of "emergency," but plenty governing the admission of surgeons not on the courtesy staff.

Q. As a matter of fact, following the Tew incident you drew up this definition of "emergency"?

A. I did.

Q. And that is the first time you ever had such a definition?

A. I do not know as to that.

Q. In that definition you said specifically that it was to apply to Group Health Association, did you not?

A. I said that the definition would apply to Group Health Association so that there would be no question involved.

Q. You did not pick out anybody else or any other clinic to whom it might apply in specific terms?

A. No.

Q. Is it not a fact that you made a copy of the definition of "emergency" available to the other hospitals in the District of Columbia?

A. I did not.

Q. Is it not a fact that the other hospitals in the District of Columbia applied to your hospital for that definition so that they might keep it?

A. I have been told so.

Q. The action of the Surgical Service in recommending against Dr. Selders was based upon the ethical status of Group Health Association and the fact that the legality of Group Health was being questioned?

A. There was another reason advanced by the Surgical Service.

Q. But pending the study of Dr. Selders—

A. There was another reason advanced by the Surgical Service.

Q. What was that?

A. It was that being the sole surgeon of a large group of people they would not be able to grant him surgical privileges.

Q. Will you find the statement of any action which the Surgical Service took in December of 1937? Have you any notes here with you?

A. No.

Q. The folder that you have in your lap—does that contain hospital documents at all?

A. It does not.

Q. Suppose you look at these, then (handing papers to the witness). I show you Dr. McGovern's report to the president. Does that indicate that the reason you just mentioned was presented?

The Court: Maybe you can get at it in this way. Was it a matter of record or not?

The Witness: I did not catch that.

The Court: Was this additional reason a matter of record?

The Witness: Yes, sir.

By Mr. Lewin:

Q. I show you the minutes of the Executive Committee of the Board of Directors and ask you if there is anything in that that could be interpreted as being the reason you suggested.

Mr. Leahy: What is the date?

Mr. Lewin: December 28, 1937.

The Court: If I may suggest: Maybe he can indicate what paper it would be.

Mr. Lewin: I wish he would.

By Mr. Lewin:

Q. Can you so indicate?

A. My information is it was a letter addressed by Dr. Hooe of the Surgical Service to me as Chairman of the Advisory Committee.

Q. Was it not addressed to you in the fall of 1938?

A. I don't remember the date of it.

Mr. Leahy: I have a copy of it right here.

By Mr. Lewin:

Q. Am I correct that it was November 21, 1938?

A. It was; evidently referring to a second application after legality had been determined.

Q. So that the reasons given in the fall of 1937 and the reasons given for the denial of privileges in January, 1938, did not include this reason which you have now mentioned as the additional one?

A. It is not so stated in the record.

Q. Did you not just tell his Honor that it was stated in the record, if it was stated at all?

A. It was not so stated in the record.

Mr. Leahy: His Honor asked him if it was made a matter of record, and he said Yes.

The Court: I thought he referred to a letter.

By Mr. Lewin:

Q. Now, Dr. Macatee, after you received notice of Mr. Justice Bailey's decision upholding the legality of Group Health Association, was Selders admitted to your staff?

A. He was not.

Q. Was he admitted at any time during 1938 after his temporary privileges were withdrawn?

A. So far as I know, he was not.

Q. And down to the date of the indictment he was not admitted, was he?

A. He was not.

Q. Although in the fall of 1938 he made an additional application?

A. Yes.

Q. And you simply let it take the same course, did you not?

A. Yes.

Q. And referred it to those various committees?

A. I don't know whether all the references were made or not.

Q. Were references communicated with in the fall of 1938?

A. I don't know.

Q. So far as you know, there was nothing more that happened except to send the applications through the mill again?

A. Yes. In the operation of the mill I had nothing to do normally, in my official capacity, with following up those references or making any communications having to do with them.

Q. What were the names of the two Group Health Association doctors who were admitted in 1938?

A. One, I think, was Dr. Price, and the other, my recollection is, was a Dr. Halstead. I am not sure.

Q. Dr. Halstead testified to the contrary when he was on the stand. Could it have been Dr. Bowe?

Mr. Leahy: Testified to the contrary of what?

Mr. Lewin: He testified that he was not admitted to the staff of Garfield Hospital in 1938. There cannot be any doubt about that.

Mr. Leahy: I don't know. It is too far back for me.

The Witness: The name Bowe sounds familiar.

By Mr. Lewin:

Q. It may have been Dr. Bowe and Dr. Price?

A. Yes.

Q. As a matter of fact, were not those gentlemen admitted for the first time on December 19, 1938?

A. Yes.

Q. And, as a matter of fact, did not you and your colleagues at the hospital know that a grand jury of the United States had been convened in the late summer of 1938 and was investigating this very matter at the time they were admitted?

A. I don't think that entered into the consideration of the matter.

Q. I did not ask you that. I asked you whether you did not know that that was so.

A. No; I don't know that it is so, but I do know that that would not influence me.

Q. As a matter of fact, don't you know that those gentlemen were admitted for the first time two days before the indictment in this case came down?

A. I don't know that.

Q. What would your testimony be now with regard to Dr. Halstead? Does that refresh your recollection that he was not admitted at all?

A. No; I don't remember.

Q. On your direct examination, Doctor Macatee, I find on referring to the record, that you gave this testimony. Mr. Leahy asked you with regard to the so-called White List—

"Q. Do you recall, Doctor, at what date, if any, any authorization was made to prepare an approved list which has been called a White List?"

And you answered:

"That was incorporated in the constitutional amendment adopted in March, 1937, in which the Executive Committee was charged with the duty of preparing such a list."

Do you remember that testimony?

A. I do.

Q. When you said it was incorporated in the constitutional amendment, you did not mean that the list itself was incorporated in that amendment, did you?

A. I did not; the authorization.

Q. Then you were asked:

"Q. I ask you, Doctor, if the preparation of an approved list had anything whatsoever to do with Group Health Association."

And you answered:

"Nothing whatsoever."

Do you remember that?

A. I do.

Q. Do you still stand on that testimony?

A. I do.

Q. Did you mean to confine your answer to the preparation of an approved list back in March, or the preparation of the approved list in July of 1937?

A. I meant to limit it to the preparation of an approved list in July, 1937.

Q. You did?

A. Yes.

Q. So that your testimony is that the preparation of the approved list in July of 1937 had nothing whatsoever to do with Group Health Association?

A. Yes.

Q. You also testified as follows:

"Q. Did that approved list, as it came before the Executive Committee on July 12, 1937, have anything whatsoever to do with the approval or disapproval of Group Health Association, Incorporated?"

And your answer was:

"It did not."

Do you remember that testimony?

A. I do.

Q. Do you stand on that testimony?

A. I stand on it.

Q. By that did you mean to limit your answer to the approved list as it came before the Executive Committee, or did it include also as it left the Executive Committee on July 12, 1937? In other words, is there any point in this definition as it came before the Executive Committee—

Mr. Leahy: I made no point of that.

A. There is no point in that. My answer is the same both as it came before and as it left.

By Mr. Lewin:

Q. And your testimony is that it had nothing to do with Group Health Association and was not directed at Group Health Association?

A. That is true.

Q. Did you mean to testify also that when it was first authorized to be issued to the hospitals as well as the members on June 21, 1937, it was not aimed at Group Health and had nothing to do with it?

A. It was not. It was unfinished business left over from March 25.

Q. Is it also your testimony that when it was sent out on July 29 both to the members of the District of Columbia Medical Society and to all the private hospitals, that then it was not directed toward Group Health Association?

A. It was not.

Q. Is it not true that the committee which was appointed in March, 1937, to prepare this White List consisted of the defendant McGovern as Chairman, and of the defendant Hooe and of another doctor named Dr. Daniel Borden?

A. I don't recollect the composition of the committee.

Q. To refresh your recollection I show you the minutes of March 19, 1937 (Gov. Ex. 36).

A. Yes; that would be the committee.

Q. And the committee then consisted of three, two of whom are defendants in this case; is that correct?

A. Are defendants; yes.

Q. Is it not true that the first approved list which was sent out under Section 5 was approved by the Executive Committee on July 12, 1937?

A. I think that is the correct date.

Q. No list under Section 5 had been approved by the Executive Committee or the Society prior to that date?

A. That is true.

Q. Is it not true that on July 12, 1937, the Executive Committee had had the subject of Group Health before it on a number of occasions?

A. On two occasions.

Q. Had it not discussed the Group Health Association situation on June 1?

A. It had.

Q. At an executive hearing to which Colonel Jones came?

A. Yes.

Q. And at which a committee was appointed to make further study?

A. Yes.

Q. And was not that committee required to cooperate with Dr. Verbrycke's committee on Medical Economics?

A. Yes.

Q. And was not Dr. Yater a member of Dr. Verbrycke's committee?

A. I don't know.

Q. Dr. Yater is a defendant in this case, is he not?

A. Yes.

Q. If the records show he was a member of that committee you would have no doubt of that, would you?

A. I would not.

Q. Did not the committee include Dr. McGovern as Chairman of the committee, and Dr. Hooe?

A. Include them?

Q. Yes, those two.

A. Yes.

Q. And they were the same McGovern and Hooe who were on the committee to prepare the approved list; is that right?

A. Yes.

Q. Is it not true that Group Health Association had been discussed by the Executive Committee on June 21?

A. That is true.

Q. And at that meeting Dr. Verbrycke had made his first report for both his committees?

A. Yes, sir.

Q. And at that meeting you had decided to have a conference with Dr. Brown of Group Health on June 21?

A. That is true.

Q. And had not Group Health Association been pretty fully discussed at that meeting with Dr. Brown and Mr. Penniman and some of those other gentlemen on June 24?

A. That is true.

Q. Is it not also true that you and a number of defendants in this case had discussed Group Health Association on May 16 in Dr. William Gerry Morgan's office?

A. That is true.

Q. Is it not true also that you and a number of the defendants in this case discussed this subject with Dr. Olin West of the American Medical Association in the early part of June?

A. I don't think I had.

Q. Did you not know that a committee had met with Dr. West?

A. Pardon me. I had discussed it with Dr. West in Atlantic City.

Q. And had you not also discussed it with him at the Metropolitan Club?

A. No, sir.

Q. Did you not know that some of them had done so?

A. I heard so.

Q. But you say you discussed it with him at Atlantic City?

A. Yes.

Q. That was June 9th or 10th, was it not?

A. Yes.

Q. So, would you say it had been discussed by you and others prior to July 12, 1937, on some seven occasions?

A. Yes.

Q. Is that correct?

A. I don't know how it adds up, but it may have been that many times.

The Court: Let us call it seven.

Mr. Lewin: It is six or seven.

By Mr. Lewin:

Q. Let me hand you the minutes of this meeting of July 12. (Gov. Ex. 37) Will you refer to the minutes of July

12, 1937, which are the minutes of the meeting at which the list was approved, and see if the committee of which Dr. McGovern was chairman did not report?

A. It did.

Q. And did he not adopt as his report the report prepared by Dr. Verbrycke?

A. Yes.

Q. And was not that adopted by Dr. McGovern's committee of which you were a member, as the report of the committee?

A. Yes.

Q. Is it not true that in the report the following appears with regard to Group Health:

"Active opposition is possible at present. Whether it is advisable is another matter; unless some substitute plan can be suggested"—

Mr. Leahy: Just a moment. That report was not adopted.

Mr. Lewin: The witness has just testified to the contrary.

Mr. Leahy: I object, if your Honor please, because I know distinctly what counsel is directing the attention of the witness to. There were two reports. One report was adopted and the other was tabled. He is now directing the attention of the witness to the one that was tabled.

Mr. Lewin: Your Honor, I did not ask him for the action of the Executive Committee on this report. I asked him whether this is not the report of the committee headed by Dr. McGovern and of which he was a member.

Mr. Leahy: No; you did not.

Mr. Lewin: I beg your pardon; I did.

Mr. Leahy: I will stand on the record.

The Court: Is that what you want to ask him?

Mr. Lewin: I pointed it out in the minutes.

The Court: It will be understood.

By Mr. Lewin:

Q. Is not this (indicating) what you and Dr. McGovern and Dr. Hooe and those others reported:

"Failure to place a cooperative on the approved list of the Medical Society would automatically forbid any consultations by members of our Society. Any full-time employees of the Corporation could probably easily fail to

be put on the courtesy list of the hospitals for one reason or another without the fact of his connection with the co-operative being even mentioned. In fact, any combative methods would necessarily have to be camouflaged to the nth degree."

Am I right?

A. Are you right in what?

Q. That that was part of your report, or the report of the committee headed by the defendant McGovern?

A. Is this document that you are reading a letter addressed to Dr. McGovern by Dr. Verbrycke after he had relinquished his post as chairman of the Executive Committee?

Q. Is not this correct? Let us have no doubt about it. At the first part of that meeting did not this transpire—

Mr. Leahy: Why don't you ask the witness?

Mr. Lewin: I am going to have him answer it from the minutes.

By Mr. Lewin:

Q. Referring to the report which was prepared by Dr. J. Russell Verbrycke, who was then chairman of the committee on Medical Economics, it says:

"Since that time the committee has met and studied and reviewed supplementary plans that Dr. Verbrycke and Dr. McGovern offered as a report to the Executive Committee tonight."

Is that correct? Does that appear there?

A. That appears there; yes.

Q. Does not the language that I have read you appear in that very report which Dr. McGovern offered as a report of his committee?

A. It appears in the letter from Dr. Verbrycke which was adopted only in principle.

Q. Was it not adopted as your report?

A. In principle only.

Q. Did you not testify that these minutes correctly reflected what transpired at that meeting?

A. If I did, then I qualify that answer.

Q. You now qualify it to say this is not your report?

A. That is a report adopted in principle. It is not my report.

Q. Do you see any place in the minutes where it says that it was adopted only in principle?

A. Did you not just read so?

Q. I don't remember it. (Reading):

"which Dr. McGovern offered as a report to the Executive Committee."

Is there anything in there about offering it only in principle?

A. Yes. (Reading): "was approved in principle by the Executive Committee at a subsequent meeting."

Q. That was the original report, was it not, that was rendered on June 21, and does it not clearly show that?

A. (Reading:) "The secretary made a motion that this letter be accepted as a report of the subcommittee and be approved in principle."

Q. That is the action of the Executive Committee, is it not?

A. That is the action of the Executive Committee.

Q. Now I ask you whether the action of your subcommittee was not to adopt that as your report.

A. I cannot say that it was, because the report of the subcommittee was made extemporaneously and at the time there had not been any formal meeting of the committee and no formal action taken.

Q. Do not the minutes here show that that was offered as the report of your committee and accepted as the report of your committee?

Mr. Leahy: Point it out, please.

Mr. Lewin: I have pointed it out a number of times.

Mr. Leahy: Oh, no; you have not.

A. To get the picture, you have got—

Q. What is your answer to my question now?

A. What is the question?

Q. I want to know whether the report from which I read was the report of your committee which was offered as the report of your committee and taken by the Executive Committee as the report of your committee?

A. It was a report offered by the chairman at that time without objection by other members of the subcommittee and adopted by the Executive Committee in principle only.

Q. Is not this true, that it contained the language that I have read?

A. Yes.

Q. Is it not true that when you said that failure to put a cooperative on the approved list of the Medical Society would automatically forbid consultations, were you not referring to this approved list, approved that very day or night, July 12, under Section 5?

A. That is probably the list referred to there.

Q. And when you referred to failure to put a cooperative on the approved list were you not referring to Group Health Association?

A. I was not; the letter was.

Q. Is not that what the report was referring to?

A. It was.

Q. Is it not true also that there was an amendment and only one amendment to the approved list that night which was offered for approval of the Executive Committee?

A. I have no recollection of any amendment.

Q. As a matter of fact, did you not object to Group Health Association on the ground that you thought it was an instrumentality of the Federal Government?

A. On the occasion of the consideration of the approved list?

Q. Yes.

A. Group Health Association was not considered in the preparation of the approved list.

Q. In those meetings prior to July 12, and on July 12, as disclosed by this report, was not one of your objections to Group Health Association that you regarded as the Government coming into the practice of medicine?

A. That was one consideration.

Q. Then at this time you regarded Group Health Association as connected in some way with the Federal Government, did you not?

A. Yes.

Q. And would you regard some of its doctors on the staff of Group Health as being connected with the Federal Government? Is that right?

A. Yes.

Q. Is it not true that when this report was first brought to the attention—that is, the report on the approved list, that item read, as one of the groups to be approved, “Medical personnel connected with the Federal and Municipal Governments within the District of Columbia or within ten miles thereof”? Is that right?

A. That is true.

Q. If that list had been approved in that manner it would have carried——

A. Just a moment.

Q. Wait a minute.

The Court: He has a right to explain his answer.

Mr. Lewin: He is trying to answer something else.

The Witness: No; I am not. I am trying to answer that particular question, because that particular No. 10 had to do with services by medical officers and set up with statutory rights behind them.

By Mr. Lewin:

Q. If Item 10 had been approved as drawn, that you were approving of "medical personnel connected with the Federal Government," it might have included Group Health Association and its members, might it not?

A. It might not.

Q. You say it would have, do you?

A. Oh. I see the drift of your question now.

Q. Just answer the question. Would it not?

A. Your question cannot be answered as put.

Q. If you had permitted this report to go through with that item 10 reading that you approved the medical personnel connected with the Federal Government, that might have carried with it the approval of Group Health Association and its members, might it not?

A. It might have. I have no knowledge of its having been amended with that object in view.

Q. But it was amended, was it not, and was not the amendment suggested by you? Am I right?

A. Yes. I said, "employed by" rather than "connected with."

Q. Is this correct——

A. (Continuing): And the purpose of making the amendment was——

Q. I did not ask you that. (Reading):

"Dr. McGovern read the proposed list of approved organizations, groups, and individuals. Dr. Macatee suggested that the words 'employed by' be substituted for the words 'connected with' in item 10. With this change the list was approved upon motion duly seconded and adopted." Is that correct?

A. That is correct.

Q. So that after such amendment went through the list could not be construed as approval of Group Health Association or its members, whereas before it might have been?

A. The amendment had nothing to do with anything other than the grammatical construction of the document.

Q. Nevertheless the amendment had the effect that I have just indicated, did it not?

Mr. Leahy: I object. That is argumentative.

The Court: Yes; that is argumentative.

A. It is not my conclusion.

By Mr. Lewin:

Q. Is it not true that when that list was amended and was ready to be issued the following transpired in the minutes, directly connected with the list itself and without intervening colloquy whatever (reading):

"Dr. Raymond T. Holden, Jr., inquired as to the personnel maintained in the proposed Group Health Association, Inc. Dr. Hooe pointed out that it was a separate individual corporation and would have to be approved as a single unit. As a matter of information Dr. Hooe would inquire if he was right in the assumption that this approved list would not have to be submitted to the Society, but from tonight would be filed in the secretary's office."

Does not that appear?

A. It appears.

Q. Just in the way I have stated it, does it not?

A. Yes.

Q. So that Group Health Association was specifically considered at the very time that the White List was approved, and in connection with it?

A. Group Health Association was specifically considered and excluded.

Q. That is what I thought.

A. Excluded from consideration in connection with the White List.

Q. Do you find anything that excludes it here (indicating)?

A. (Reading): "Dr. Holden inquired as to the personnel maintained in the proposed Group Health Association. Dr.

Hooe pointed out it was a separate individual corporation and would have to be approved as a single unit when it came up for consideration for approval."

Q. Does it say "when it came up for consideration"?

A. No; but that is the meaning of it.

Q. I think you testified that the reason it could not be approved then was because it had not made application for approval; is that right?

A. That among other things.

Q. Did you not know that at that time it had been in existence as a corporation some five months?

Q. I did not. I don't know how long it had had corporate existence. I had known of it only since about the middle of May.

Q. Did you not know that in June and July it was an organization seeking medical personnel?

A. I did not know whether it was then seeking medical personnel.

Q. Had not Dr. Brown told you that in his meeting with you on June 24?

A. He said that eventually it would seek medical personnel.

Q. Did he not say they were seeking medical personnel then?

A. I don't recollect that.

Q. Did you not know they had already approached Dr. Neill and asked him to come with the staff?

A. I had no knowledge of that.

Q. Did you not say when you went down to see the representatives of Group Health that you understood approaches had been made to your members, on July 26?

A. Yes.

Q. So you knew on July 26 that they were seeking medical personnel?

A. Obviously I did.

Q. Do you think you gained that information between July 12 and July 26?

A. I don't know how I gained the information.

Q. Doctor Macatee, did you not know on July 12 that they were seeking medical personnel and had been approaching some of your members?

A. I couldn't testify to that to save my life.

Q. You would not deny it?

A. I cannot deny it; no.

Q. Was not the purpose of having an approved list to guide your members as to whether or not they could join up with or participate in certain organizations?

A. In certain organizations, but not Group Health Association.

Q. That is what you said. But I ask you whether or not the whole purpose of the approved list was not to guide your members as to whether they could join or not?

Mr. Leahy: Join what?

Mr. Lewin: Organizations.

A. The whole purpose of the approved list was in Chapter 9, Article 4, Section 5, which had to do with something else entirely, unrelated to Group Health Association.

Mr. Lewin: I move that that be stricken as not responsive.

The Court: You asked him what the purpose was.

By Mr. Lewin:

Q. I asked you whether it was to indicate to your members whether they could participate with certain organizations.

A. My answer would have to be something of a recital, and that is that the amendment to the constitution began in January, 1936, and it was amended in January, 1937.

Mr. Lewin: I do not think that is responsive, your Honor. I move that it be stricken as totally unresponsive.

The Witness: And that it is—

Mr. Lewin: I have a motion pending.

The Court: Just a moment, Doctor. It is not always possible to answer a question yes or no. It may not give a correct impression. I think it is well, if he can answer yes or no, to do so, and then make any qualifications or explanations that are necessary. After all, it does not make much difference how you approach the answer. He was giving you his understanding of the purpose. You asked for the purpose. He was explaining to you the purpose as he understood it.

Mr. Lewin: I most respectfully submit that the witness was giving me a history.

The Court: I think the Doctor was getting away from the purpose.

The Witness: My next sentence would complete the history.

Mr. Lewin: I do not want the history. I move that all that history go out.

The Court: He told you the purpose, and that is what you were after. Suppose you put another question.

By Mr. Lewin:

Q. I will ask you this, whether it would not have been a more suitable time to put the organization on or off that list when they were in the formative stage and going around trying to get medical personnel, if you wanted to guide your own members?

A. It may have been a suitable time, but we did not have sufficient information about it to know at that time.

Q. Now, Doctor, you said that one of the reasons it could not go on the approved list was because it had not applied for approval.

A. Did I say that?

Q. That is what I recollect. Did you not say that? What is your answer?

A. I would rather say that in my report I said so in September.

Q. Did you not testify here on Friday that that was the reason you could not put it on the approved list?

A. My memory fails me there, sir.

The Court: Suppose you ask him now and save time.

By Mr. Lewin:

Q. What is your answer now? Was that the reason you could not put it on the approved list, or one of them? Will you answer that question?

A. The answer is that it is bound up in the fact that at that meeting the special committee was charged to go down and have another talk with Group Health Association to see if we could not reach some accord.

Mr. Lewin: I object, and ask that the answer be stricken as unresponsive.

The Court: Have you got the record there?

Mr. Lewin: Yes, sir.

By Mr. Lewin:

Q. Did you not testify as follows (reading):

"Q. Did that approved list, as it came before the Executive Committee on July 12, 1937, have anything whatsoever to do with the approval or disapproval of Group Health Association, Inc.?"

And you answered:

"A. It did not.

"Q. Why not?"

"A. Because Group Health Association had not been at a stage of development where it had asked for approval or where approval could be given, for lack of information."

Was that your testimony?

A. That sounds like it.

Q. Can you tell me what other organizations that were approved and put on the approved list asked for approval at that time?

A. None. I say, none, Mr. Lewin. I am not sure about that.

Q. That is your best recollection, is it not?

A. I was not a member of the committee that received applications for approval, so I just don't know.

Q. Application for approval was not a condition precedent to getting on that approved list, was it?

A. Not this one; no.

Q. As a matter of fact, Dr. McGovern was going out into other states to round up the list himself, was he not?

A. I don't know how to answer that, because it is not within my own knowledge.

Q. Don't the minutes on that occasion show this, Dr. Macatee?

Mr. Leahy: What meeting?

Mr. Lewin. July 12, 1937 (Gov. Ex. 37). "Dr. McGovern stated that he requested the various county medical societies in Virginia and Maryland, within ten miles of the District of Columbia, to send him a list of their membership. He was not very successful by letter and intended to contact the secretary personally. He added there were a few physicians practicing medicine in the District of Columbia who were on the rolls of the Society. The Society's office

was busy at the present time checking the list of physicians and surgeons as classified in the newest telephone directory and the Commission on Life Insurance has been approached to obtain a list of all associates in the District of Columbia."

Doesn't that appear?

A. It does.

Q. And didn't that transpire on that occasion?

A. It did.

Q. So, would you say now, that the failure of Group Health Association to apply formally was any reason for not including it on the approved list?

A. That was still a good reason, though not the controlling reason.

Q. What was good about it?

A. It was true.

Q. You still say it was true, that one of the reasons for leaving Group Health off that list was because it didn't apply?

A. I said that was true. The controlling reason was we hadn't come to the point where we could approve or disapprove of it finally.

Q. Let me see if I can make this more clear. As a matter of fact, hadn't Dr. Brown said he was anxious to go along with the District Medical Society, prior to July 12, 1937?

A. That may have been one of his statements at the meeting.

Q. And hadn't Mr. Penniman said in substance that same thing; that he was anxious to go along with the Medical Society and have your approval?

A. He may have said it.

Q. Now, when you acted as spokesman on July 26, 1937, in the meeting with the Group Health Association trustees, I think you said that the meeting's minutes herein correctly reported that meeting, did you not; that was the meeting of July 26th?

A. That statement was extemporaneous and, as transcribed, ran along with my general thought that I wished to express therein.

Q. Didn't you say this to the Group Health trustees at that time:

"The principal difficulty that we are facing at the present time also is the knowledge of certain members of the Dis-

strict Medical Society have been approached with a view to serving certain organizations in a medical capacity and professional capacity";

and then, skipping a little:

"There is another provision which prohibits members of the Medical Society from lending their assistance to any corporation, group or individual under a contract until the practices and purposes of the organization have been approved by the Medical Society" et cetera.

You said that?

A. Yes.

Q. Wasn't this the other provision, this section 5, under which this approved list went out on July 29th?

A. I don't know whether it was section 5 or section 2.

Q. Isn't section 5 the one that prohibits members of the Medical Society from lending their services to any corporation, group or individual unless the practice and purposes have been approved?

A. Yes, that is the provision of section 5.

Q. Then you were calling section 5 to the attention of the Group Health Association as early as July 26, 1937?

A. Yes.

Q. You were calling their attention to it in connection with the information you had that Group Health Association was seeking a staff and had approached members of the Medical Society?

A. Obviously.

Q. Is that right?

A. Yes.

Q. Now, on July 27th, isn't it correct, that the resolution to send the so-called white list to the members of the Medical Society of the District of Columbia was amended so that it would be sent to all the hospitals as well?

A. If the record shows so.

Q. Aren't you familiar with that record?

A. No, not that familiar.

The Court: There isn't any question about that, is there?

Mr. Leahy: No, whatever it was; I know there was such a provision.

The Witness: Yes, that states so in the minutes.

By Mr. Lewin:

Q. That amendment was adopted on July 27th?

A. Yes.

Q. Now, on July 29th, the so-called white list was issued for the first time?

A. I have heard evidence here to that effect.

Q. Wasn't it sent out with two letters dated July 29th, signed by the Secretary of the District Medical Society?

A. There appears to be such a letter.

Q. And didn't the first of these letters read as follows: (Gov. Ex. 45).

"Dear Doctor:

"It may have come to your attention that there is an organization or organizations that are interested in gaining medical personnel. Your attention is called to Chapter IX, Article 4, Section 5 of the Constitution", quoting it in full.

Isn't that what it says?

A. Yes.

Mr. Leahy: It says more than that.

Mr. Lewin: Yes, it does.

"You are particularly urged to submit to the C. C. & I. M. Committee, pursuant to the Constitution, any and all contracts, written or verbal, under which you may contemplate giving your services"?

A. It says that.

Q. That letter which carried the white list with it refers to an organization or organizations that are interested in gaining medical personnel, does it not?

A. Yes.

Q. Would you say that one of those organizations was Group Health Association?

A. Presumably.

Q. So that whether it was directed to Group Health Association on July 12th, or not, it was plainly directed to Group Health on July 29, 1937, the first time it went out?

A. That among others.

Q. Now, at this very meeting on July 29th, didn't you make that fact abundantly clear? Didn't you say this with regard to Group Health Association,—(handing witness Gov. Ex. 37 and indicating)?

"It was his impression, gained from contact with certain individuals, that they are highly intelligent people who have profoundly studied this subject, who are aware of all the social currents flowing through the country with respect to the relation of the medical profession and the people. They are aware of what has been done elsewhere and the results." Did you say that or words to that effect?

A. My answer is that those minutes, taken down in long-hand, had been shown not to express my thoughts so often that I hesitate to say they are, or that I did say that; but that was my opinion.

Q. That was your opinion, and you have no reason to doubt you said it?

A. Correct.

Q. When you were talking about "these people," weren't you talking about the sponsors of Group Health Association?

A. Yes.

Q. And didn't you say:

"My feeling is that this is a group of responsible, honest, rather public-spirited people, who are undertaking to do something for the benefit of their associates in office. They are convinced and have secured what they call competent legal advice that they are on secure legal ground. They have by reason of their knowledge of similar projects elsewhere become convinced that wherever such organizations spring up they almost consistently receive the antagonism and the animosity of the local medical profession."

Didn't you say that?

A. Probably.

Q. And when you were speaking of these "projects" weren't you referring to the Ross-Loos Clinic and other prepayment plans such as that?

A. Presumably.

Q. Didn't you say also:

"Dr. Macatee added that he was of the opinion that their desire to avoid publicity in this matter was due to their knowledge of that fact?"

A. Probably.

Q. And by that didn't you mean the reluctance on the part of the Group Health people to open their doors to give you the contract with H.O.L.C. was due to the fact that

they knew by reason of their knowledge of "similar projects elsewhere" . . . that wherever such organizations spring up they almost consistently receive the antagonism and animosity of the local medical profession"? Isn't that what you meant?

A. I think that is why they proceeded with their organization without our cooperation and advice before they asked for it.

Q. And you seemed to feel that they were somewhat reasonable, knowing of the antagonism of the local medical society, in being a little cautious in putting all their information in your hands?

A. Yes.

Q. Didn't you say this, following your discussion of Group Health Association, and as part and parcel of it:

"Dr. Macatee added that there is now available a list of corporations and organizations and persons employing physicians in a contractual relationship, prepared under provisions of the constitution and by-laws. He urged the members to take the list and examine it carefully and familiarize themselves with the contents".

Did you say that?

A. Yes.

Q. And when you urged this examination of the list, and urged the members to familiarize themselves with the content, weren't you referring to this approved list issued July 29th?

A. Yes.

Q. Weren't you calling attention to its contents in connection with their attitude toward Group Health Association?

A. Yes, because the adoption of the white list had been on account of our experience in another matter, and we finished up that business in order to save us further headaches of the same sort.

Q. Is this also the fact too: that after you talked that way, Dr. Sprigg reread a recommendation of the Executive Committee which was adopted?

Mr. Leahy: What date is that?

Mr. Lewin: July 29, 1937.

The Witness: Yes.

By Mr. Lewin:

Q. And didn't that resolution have to do with Group Health Association?

A. It did.

Q. And then didn't the Secretary say, without any other subject matter intervening between Group Health and what he said, this:

"The Secretary stated that it was the duty of the Society's office to fulfill instructions from the Executive Committee to supply each member of the Society with a copy of the approved list that had been prepared, pursuant to Chapter IX, Article IV, Section 5 of the constitution. He pointed out that they were being mailed by registered mail. He announced that any member wishing to secure his list tonight could do so by applying at the Secretary's office and signing for same, which would aid in the distribution?"

A. And the two statements had no connection with each other.

Q. Although one follows the other?

A. The minutes are never subdivided to show divisions of subjects.

Q. Was there any subject matter that intervened between the matter concerning Group Health Association and this matter?

A. Nothing appears in the minutes, but it might very well be and appear that taking up another item the Secretary said thus and so.

Q. But you don't know about that?

A. No.

Q. Mr. Leahy went over with you, I believe, the letter which the defendant Sprigg prepared in the fall of 1937, addressed to each one of the hospitals; am I right?

A. I can't give direct testimony about that, because I wasn't present at the meeting when this thing was discussed.

Q. Didn't that letter start off by calling attention to this section 5?

Mr. Leahy: The witness said he had no knowledge of it.

Mr. Lewin: I know he said that, but the Court has indicated that we may read portions of the minutes.

The Court: Yes, you may read them, but if the witness

says he has no knowledge on the subject he can't testify to it.

The Witness: If you put the letter before me I can say "I suppose that might be the letter," but I wasn't present when it was presented and considered.

By Mr. Lewin:

Q. You were present on November 3rd, 1937?

A. I think I was not.

Q. Didn't you testify this morning with regard to the resolution of the defendant Willson, seconded by the defendant Christie?

A. I couldn't have testified as a direct witness, because I wasn't present on that occasion.

Q. I ask you whether that resolution, which was certainly introduced again through your testimony, whether that resolution didn't say that the District Medical Society had an apparent means of hindering the successful operation of Group Health Association if it could prevent the doctors from being received in the local private hospitals, and then didn't the resolution refer directly to section 5, the same section adopted in March, and under which the white list went out in July?

A. I have no direct knowledge of that document; I would have to appeal to the record.

Q. Let me come back to that meeting which you had with the Group Health trustees on July 26th. You remember that?

A. Yes.

Q. Isn't it true that at that meeting you quoted somewhat from the principles of ethics?

A. Yes.

Q. Did you follow that up by pointing out that they might have difficulty in having and getting consultations?

A. Yes.

Q. And didn't you point out that they might have difficulty in getting hospital accommodations, because of the principles of ethics, medical ethics?

A. I am not clear about that.

Q. Wasn't one of the principles of medical ethics, to which you directed their attention, certain criteria for making contract practice ethical?

A. Yes.

Q. And didn't one of them include this "free choice of physicians"?

A. Yes.

Q. Now, isn't it true that in June, 1937, the American Medical Association had amended its principles of ethics so as to include what it thought was a definition of "free choice of physicians"?

A. Yes.

Q. And isn't it true that you failed to bring that definition to the attention of the Group Health representatives when you met with them?

A. I did fail to bring it to their attention.

Q. Didn't you consciously fail to do so?

A. I did.

Q. And because you wanted to withhold from them this more liberal definition of "free choice"?

A. No, the record will show that it was withheld because it was ambiguous, had just been adopted; we didn't know the purport of it.

Q. And isn't it true that because it was ambiguous, you refrained from giving them that information?

A. I did.

Q. But tried to leave them with the impression that this prohibition against free choice was a clear and unambiguous thing?

A. You are asking me now to recall motive?

Q. I am asking you whether that was not your intent to withhold from them this recent amendment to the principle of free choice, and to leave them with the impression that contract practice was condemned because of a clear meaning of free choice?

A. If you want the best of my recollection I will say that I did not have any such intent, and to the best of my recollection I discovered this newly adopted item after the thing.

Q. Dr. Macatee, weren't you present at the House of Delegates in Atlantic City in the early part of June, when this very amendment pertaining to free choice of physicians was enacted?

A. I was present at the meeting but I might not have been present at the session; more likely I was otherwise engaged at the time.

Q. Is it your thought that you forgot this on July 26th?

A. Reading back on the record, I think I forgot all about it.

Q. But you didn't forget it on July 27th, the very next day?

A. Naturally, I would think over what I had said, trying to summarize what I had said extemporaneously and, looking over it, see what I had omitted, came across this thing and brought it to the attention of the Executive Committee.

Q. Didn't you bring this to the attention of the Executive Committee one day after this meeting with the representatives of Group Health Association?

"Dr. Macatee, in continuing, read an excerpt from the latest issue of the principles of medical ethics of the American Medical Association, having to do with the definition of free choice of physicians, as follows:

"The phrase 'free choice of physicians,' as applied to contract practice, is defined to mean that degree of freedom in choosing a physician which can be exercised under usual conditions of employment between patient and physician when no third person has a valid interest or intervenes. The interjection of a third party who has a valid interest or who intervenes does not per se cause the contract to be unethical."

That would apply, would it not, to Group Health Association?

A. No.

Q. Wouldn't that have some reference to Group Health?

A. No, because the reference is to constituent or component units, local associations or societies.

Q. Doesn't it say that the "interjection of a third person who has a valid interest between patient and physician does not per se cause the contract to be unethical"?

A. It does say so there.

Q. And doesn't it define a "valid interest" as one where, by law or necessity, a third party is legally responsible either for cost of care or for indemnity, and doesn't it supply the definition of "intervention" as the voluntary assumption of partial or full financial responsibility for medical care?

A. It does.

Q. And wouldn't that definition cover Group Health Association as one who intervenes?

A. Under the law of necessity?

Q. No, not under the law of necessity. It says "voluntary assumption: voluntary assumption of partial or full financial responsibility for medical care." Wouldn't that fit Group Health Association exactly?

A. You will have to apply the definition.

Q. And then doesn't it continue: "Intervention shall not prescribe"—I guess that means forbid; "endeavor by component or constituent medical society"—I guess that means members of the A. M. A., doesn't it?

A. Yes.

Q. "To maintain high quality of service rendered by members serving under approved sickness service agreement between such societies and government boards or bureaus and approved by the respective society."

A. That is the controlling phrase there.

Q. In other words, when the local society does it and approves it that throws out this "free choice of physicians"?

A. Yes.

Q. You get free choice of physicians when the local society approves it, but you may not have such free choice when something like Group Health does it, is that it?

A. I will have to leave it to you to interpret.

Q. Doesn't this follow immediately afterward:

"The ambiguity of the situation was immediately apparent.

"Dr. Macatee said that he certainly did not read this at the time of the meeting with the H. O. L. C. unit. He did, however, read on that occasion extensively from the principles of medical ethics under which the medical profession is bound, showing that the project as at present constituted could not be expected to be approved by the Medical Society of the District of Columbia, the local unit of the American Medical Association."

Is that right?

A. Yes.

Q. So at that time you had enough information to be very definite that Group Health could not go on your approved list, didn't you?

A. That was my opinion.

Q. And that was July 27, 1937?

A. Yes. I told them so on the 26th.

Q. About two weeks after the white list was approved and two days before it issued?

A. That is the way the dates fall.

Redirect examination:

I received a letter dated November 21, 1938, from Dr. Kerr, marked Def. Ex. 46.

Def. Ex. 46 was received in evidence and read to the jury, as follows:

This letter is November 21st, 1938, on the stationery of Dr. Harry Hyland Kerr, 1744 M Street, N. W., Washington, D. C.

"DEAR DR. MACATEE:

The Senior Surgical Staff of the Garfield Memorial Hospital unanimously recommend to the Advisory Committee and to the Board that courtesy surgical privileges be denied to Dr. R. E. Selders.

The Surgical staff believes that, though Dr. Selders has a competent post-graduate degree in Surgery, his experience has been limited to one year as resident in a non-teaching hospital in a small Massachusetts city, and is not sufficient to qualify him to take care of the surgery that may arise among 2000 or 3000 people.

Sincerely yours, Signed H. H. Kerr for the Staff."

The first time I ever heard of the questionnaire from Dr. Warfield concerning Garfield Hospital was at this trial, and that questionnaire was never received by the staff of Garfield Hospital to my knowledge, nor were answers ever made coming from the committee, to the best of my knowledge, to any questionnaire.

The language "aiding and abetting Group Health Association," as used in Gov. Ex. 499, means that the board decided that they would not admit Dr. Selders to courtesy privileges because of the alleged illegality of Group Health; and that to have done so the hospital would be put in a position of aiding and abetting an illegally operated corporation.

When I drew the definition of "emergency" at Garfield I had in mind nothing except that nobody would be excluded from the hospital if they came there in a real emergency, and I had no idea that the definition would go beyond Garfield Hospital.

Q. Do you recall whether—and I want to see if I can straighten this out in just a minute—in the minutes of July 12th, 1937. Do you recall whether Dr. Verbrycke had submitted a report while on the Economics Committee of the District Medical Society or the chairman thereof?

A. Yes, I have seen that report somewhere. It was a number of pages, and I remember seeing it; I don't remember the contents.

Q. June 21st was the date that was submitted, was it not?

A. I don't know.

Q. All right, now, was Dr. Verbrycke, on July 12th, in office in any committee at all in the District Medical Society?

A. He was not.

Q. Your attention is directed now to Dr. Verbrycke's letter which was made part of these minutes. Doesn't it show and read: "I have no longer any official status, but I am deeply interested in the entire subject, and since I was the author of the original report which has been approved by the Executive Committee, I ask your leave to submit some further thoughts with the hope that they may be of some slight help." Is that correct?

A. Yes.

Q. Do you recall having looked at the opening sentence of that Verbrycke letter wherein he said he had no longer any official office and his reference to the report which he says has been approved in principle by the Executive Committee?

A. Yes.

Q. Why?

A. I thought you only asked if I remembered looking at the opening remarks in the letter.

Q. Yes. Now, having done that, do you recall what it was that was approved by the Executive Committee?

A. He refers in his letter to his report of June 21st.

Q. Will you look to see if anywhere in the minutes you find anything indicating what action the Executive Committee took with reference to this particular letter? Kindly look at the top of page 5, and see if it refers to Dr. Verbrycke's letter.

A. I think it does.

Q. What happened to it?

Mr. Lewin: Is he going to read from the minutes?

The Witness: I made a motion to the effect that the

supplementary report of the sub-committee be received and be held on the table for future consideration, after the report of the sub-committee. That was seconded and adopted.

Q. Do you recall now whether at any other time the report was ever taken off the table for action?

A. I don't recall; that is my independent memory.

I identify Def. Ex. 47 as the minutes of the meeting of the Executive Committee of the Medical Society of May 12, 1937. To my knowledge no member of the District Medical Society had heard of Group Health on May 12, 1937.

The list referred to in the meeting of May 12, 1937, is the White List that came out on July 12, 1937.

Defense counsel read Def. Ex. 47 to the jury as follows:

"Dr. F. X. McGovern, Chairman of the Subcommittee to prepare an approved list in accordance with the provisions of Chapter IX, Article IV, Section 5 of the constitution was recognized.

"The various items were considered ~~separately~~ as follows:

"1. All members of the Medical Society of the District of Columbia.

"2. Medical staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia, and/or the American College of Surgeons, the American Medical Association, the American Hospital Association, in the District of Columbia or within ten miles thereof.

"It was agreed to amend recommendation No. 2 as follows:

"'Medical Staffs of all hospitals, institutions and clinics, each member of which has been approved by the Medical Society of the District of Columbia.'

"3. The United States Government, medical personnel on duty in the District of Columbia or within ten miles thereof, namely, i. e., the United States Army, Navy, Public Health Service, and the Veterans Administration.

"4. The Health Officer and attached medical personnel.

"5. Membership of the District Medical Society.

"6. Membership of the Homeopathic Medical Society:

"7. Members of the Montgomery County (Maryland), Prince Georges County (Maryland), Fairfax County (Virginia), and Arlington County (Virginia), medical societies, who reside within ten miles of the District of Columbia.

"8. Members of the Alexandria Medical Society.

"9. The following compensation clinics.

"1. Washington Industrial Accident Clinic.

"2. Washington Medical Building Workmen's Clinic.

"3. Northeast Insurance Clinic.

"4. Union Market Workmen's Compensation Clinic.

"5. Market Compensation Accident Clinic.

"6. Washington Compensation Accident Clinic.

"7. Washington Insurance Clinic.

"8. Harry M. Lewis Clinic.

"9. First Aid Station.

"Discussion on the recommendation No. 9 was participated in after the reading of the other reports.

"10. All medical personnel connected with the Federal or Municipal Government within the District of Columbia or within ten miles thereof.

"Dr. Daniel Borden was of the opinion that this should not be included."

"Others could see no objection to this subdivision.

"11. Membership of the Medico-Chirurgical (Colored Medical Society).

"12. Membership of the Robert T. Freeman Dental Society (Colored Dental Society). In the consideration of item 9. Dr. W. M. Sprigg stated he thought the clinic should be listed temporarily."

The clinics appearing on the list set out in the May 12 minutes appear on the approved list of July 12 and these clinics had been in existence in the District since the passage of the Industrial Compensation law. These clinics had been before the District Medical Society on their purpose, maintenance and operation and had been approved.

It was stated on July 12, 1937, that that list was incomplete and as a matter of fact the Washington Sanitarium was not on the list. It did not purport to be a complete list. There were many doctors in Washington who were not on that list. Group Health never made a formal application for approval to the District Medical Society.

Q. There is one other thing. Under cross-examination you had your attention directed to the minutes of July 29. You made some answer in substance in effect to the end that the minutes had no subdivisions as to topics. Do you recall that?

A. I do.

Q. And your attention was directed to the reading of one entry which follows another entry in those minutes?

A. I recollect that.

Q. And your attention was directed to the minute with the statement that there was no information intervening between these minutes. I will ask you if the minutes show a line between those paragraphs, showing that there was something transpired in there?

A. There is a line indicating a division; a typed line.

Mr. Lewin: Wait a minute. What is that?

Mr. Leahy: A typed line.

Mr. Lewin: Is there any subject matter or discussion that appears between the resolution with regard to Group Health and this statement to the secretary?

The Court: Let the jury see it.

Mr. Leahy: Yes. Let it be passed to the jury so they may see it.

(Thereupon the minutes were passed among the jurors for inspection.)

The Court: Is that all?

Mr. Leahy: Yes. And I ask the same permission with respect to these minutes. If the jury will also look at the other pages to see where the breakdown comes.

Mr. Lewin: There is another page in the minutes I would like the jury to look at also.

The Court: Yes, you may do that.

Mr. Lewin: I would like the jury to consider these three paragraphs on this page, particularly the third one.

Mr. Leahy: You mean read them over?

Mr. Lewin: I would like to have them look over this statement of Dr. Macatee, and the subject matter of this here (indicating).

DR. WALTER ESTELL LEE, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am a doctor. I reside in Philadelphia. I am professor of surgery at the Graduate School of Medicine of the University of Pennsylvania and have been connected with that school since its beginning in 1920. I graduated from the University of Pennsylvania in 1902; after graduation I trained at the Pennsylvania Hospital for six years. I signed Def. Ex. 44, being a letter to Dr. Frederiek Sanderson, and forwarded it to him.

Cross-examination.

By Mr. Lewin:

In 1937 and 1938 Dr. George H. Meeker was dean of the Graduate School of Medicine at the University of Pennsylvania. I also signed a letter marked Gov. Ex. 661; and I suppose my stenographer sent it; as I gave instructions to have it sent. I also signed Gov. Ex. 659 and sent it out in the same manner as Gov. Ex. 661. The signature "Walter Estell Lee" on Gov. Ex. 660 is not mine, and I can't imagine who signed it, and I can't recognize the letter as my own.

J. FRANCIS MOORE, a witness for the defendants.

Direct examination.

By Mr. Burke:

I have been a witness in this case previously and brought some documents of the Federal Home Loan Bank Board which were subpoenaed. I identify Def. Ex. 48, 49, and 50 and 50a as the original records of the Home Owners' Loan Corporation and the Federal Home Loan Bank Board.

Cross-examination.

By Mr. Lewin:

These records are records found in our files, and this particular record was in the minutes file and is part of the minutes of the Home Owners' Loan Bank.

Excerpts from Gov. Ex. 1, a stipulation, being Articles I, II, III, IV, V, VI, VII, VIII, IX, and X, with amendments to December 20, 1938, of the by-laws of Group Health Association Inc., were read to the jury, as follows:

By-Laws of Group Health Association, Incorporated:

"Article I.

"Section 1. The name of this corporation shall be Group Health Association, Incorporated."

That is the name and location as adopted March 22nd, 1937.

"Article I.

Section 3. Other offices for the transaction of business shall be located at such places as the Board of Trustees may from time to time determine."

That also is the article and section as adopted March 22nd, 1937. The first article, Section 2 provides that its principal place of business shall be located in Washington.

"Article II. Membership.

Section 1. The corporation shall have no capital stock but shall be an association controlled by its members. The membership of this corporation shall be composed solely of employees of any branch of the United States government service, including such other classes or groups of persons, other than officers and enlisted men of the United States Army and Navy, as shall, within the provisions of the charter and the law governing the corporation, be designated by the Board of Trustees, provided, however that in case persons other than employees of Federal Home Loan Bank Board, its subsidiaries and affiliates, shall be designated by the Board of Trustees, provided, however that in case persons other than employees of Federal Home Loan Bank Board, its subsidiaries and affiliates, shall be desig-

nated as eligible for membership, such action shall first have approval of the members as hereinafter provided."

That was the article as adopted March 22nd, 1937, and on May 25th, 1937, Section 1 of Article II was amended, and it then read:

"Section 1. The corporation shall have no capital stock but shall be an association controlled by its members. The membership of this corporation shall be composed solely of employees of any branch of the United States Government service, including such other classes or groups of persons, other than officers and enlisted men of the United States Army and Navy; as are provided for in the charter and the laws governing the Corporation, provided, however, that in case persons other than employees of Federal Home Loan Bank Board and agencies under its direction shall be designated as eligible for membership, such action shall first have approval of a majority of the Board of Trustees and a majority of the members of the corporation present in person or by proxy at a regular or special meeting."

Then, on October 4, 1937, the section and article were further amended:

"Article II, Section 1. The corporation shall have no capital stock but shall be an association controlled by its members. The membership of this corporation shall be composed solely of civil employees of the executive branch of the United States Government service; provided, however, that in case persons other than employees of the Federal Home Loan Bank Board and agencies under its direction shall be designated as eligible for membership, such action shall first have approval of a majority of the Board of Trustees. Employees of the legislative branch or judicial branch of the United States Government service are not eligible for membership."

Then, on October 25th, 1937, it was again amended to read:

"Article II, Section 1. The corporation shall have no capital stock but shall be an association controlled by its members. The membership of this corporation shall be composed solely of civil employees of the executive branch of the United States Government service; provided, however, that in case persons other than employees of the

Federal Home Loan Bank Board and agencies under its direction shall be designated as eligible for membership, such action shall first have approval of a majority of the Board of Trustees."

Then, on September 19th, 1938, the article was further amended to read:

"Section 1. The corporation shall have no capital stock but shall be an association controlled by its members. The membership of this corporation shall be composed solely of civil employees of the executive branch of the United States Government service."

Then:

"Section 2. All members shall have equal rights of membership and the right to vote for the Board of Trustees, and the right to share in the distribution of the assets of the corporation if liquidation takes place as in the charter is provided."

That was adopted March 22nd, 1937. On May 25th, 1937, the section was amended to read:

"Section 2. All members shall have equal rights of membership including the right to vote for the Board of Trustees, and the right to share in the distribution of the assets of the corporation if liquidation takes place as in the charter is provided."

"Section 3. Applicants for membership who have just entered the service of one of the aforesaid Federal branches or agencies in which the corporation is permitted to operate shall be eligible to all the benefits of this corporation from the date of first payment of dues, provided they are duly elected at the next meeting of the Board of Trustees, and, provided, further, that, as to new employees, they apply for membership within one calendar month after entering the service of such Federal branch or agency."

That was the section as adopted March 22nd, 1937, and on May 25th, 1937, that was amended to read as follows:

"Section 3. Applicants for membership who have just entered the service of one of the aforesaid Federal branches or agencies in which the corporation is permitted to operate shall be eligible to all the benefits of this corporation from the date of first payment of dues, provided they are duly

elected at the next meeting of the Board of Trustees, and, provided further, that they apply for membership within one calendar month after entering the service of such Federal agency or branch."

Section 3 of Article II was amended, again, on October 4, 1937, to read as follows:

"Article II, Section 3. Applicants for membership who have just entered the government service aforesaid shall be eligible to all the benefits of this corporation from the date of first payment of dues, provided they are duly elected at the next meeting of the Board of Trustees, and provided, further, that they apply for membership within one calendar month from the date of entrance on duty in the government service aforesaid."

Then the section was again amended on April 5th, 1937, to read:

"Article II, Section 3. Applicants for membership who have just entered the government service aforesaid shall be eligible to all the benefits of this corporation from the date of first payment of dues, provided they are duly elected at the next meeting of the Board of Trustees, and provided, further, that they apply for membership within one calendar month from the date of entrance on duty in the government service aforesaid."

And then on September 19, 1938, the section was again amended to read:

"Section 3. The Board of Trustees shall reject an application for membership if the applicant is not an employee of the character herein designated, and may reject any application for membership. The board of trustees, for just and reasonable cause, may expel from membership, after not less than fifteen (15) days notice and opportunity for hearing before the Board of Trustees, any person who, in the opinion of said Board of Trustees, shall have abused the privilege of his membership or is otherwise guilty of wrongful conduct detrimental to the Association or its membership. The Board of Trustees, after hearing as hereinbefore provided, shall be the sole judge of whether the conduct in question warrants expulsion from membership. Membership dues shall end upon expulsion."

Section 4:

"Dependents of members hereafter becoming members of this corporation will not be eligible to benefits from the corporation until the member has been in good standing for a period of three calendar months beginning with the date of his or her application."

All employees who do not hereafter apply for membership in the corporation within one calendar month from the date of entrance on duty as an employee of one of the Federal branches or agencies in which the corporation is permitted to operate, shall not be eligible to benefits from the corporation until three calendar months after the date of their application, but during said three calendar months no dues shall be chargeable against such member."

That was adopted March 22, 1937. On May 25, 1937, the section and article were amended to read as follows:

"Section 4. Dependents of members hereafter becoming members of this corporation will not be eligible to benefits from the corporation until the member has been in good standing for a period of three calendar months beginning with the date of his or her application, provided, however, this section shall not apply to dependents of members in good standing as of the date of beginning business."

Employees who do not apply for membership in the corporation within one calendar month from the date of entrance on duty in one of the Federal branches or agencies in which the corporation is permitted to operate, shall not be eligible to benefits from the corporation until three calendar months after the date of their application, but during said three calendar months no dues shall be chargeable against such member."

Again, on October 4, 1937, the section 4 of Article II was again amended to read:

"Article II, Section 4. Dependents of members hereafter becoming members of this corporation will not be eligible to benefits from the corporation until the member has been in good standing for a period of three calendar months beginning with the date of his or her application, provided, however, this section shall not apply to dependents of members in good standing as of the date of beginning business."

Employees who do not apply for membership in the corporation within one calendar month from the date of entrance on duty in the government service aforesaid shall not be eligible to benefits from the corporation until three calendar months after the date of their application, but during said three calendar months no dues shall be chargeable against such member."

Again, on October 25, 1937, this section was amended to read:

"Article II, Section 4. Dependents of members hereafter becoming members of this corporation will not be eligible to benefits from the corporation until the member has been in good standing for a period of three calendar months beginning with the date of his or her application, provided, however, that this section shall not apply to dependents of members in good standing as of the date of beginning business.

"Employees who do not apply for membership in the corporation within one calendar month from the date of entrance on duty in the government service aforesaid shall not be eligible to benefits from the corporation until three calendar months after the date of their application, but during said three calendar months no dues shall be chargeable against such member."

Again on May 2nd, 1938, it was amended to read:

"Section 4. Dependents of those hereafter becoming members of this corporation will not be eligible to the benefits of this corporation until the member has been in good standing for a period of three calendar months, beginning with the date of his or her application, provided, however, that this section shall not apply to dependents of members in good standing as of the date of beginning operations.

Employees who do not apply for membership within one calendar month from the date of entrance on duty in the government service aforesaid shall not be eligible to the benefits of this corporation until three calendar months after the date of their application, during which three months, however, no dues shall be paid by or be chargeable to such applicants."

The section was again amended on September 19, 1938, to read:

"Section 4. If any dues of a member are not paid within sixty (60) days after their due date, such members automatically at the end of the last day of such period cease to be members and can only be reinstated to membership by action of the Board of Trustees. If any dues of a member are not paid within ten (10) days after their due date, such member shall be refused all services except in case of serious emergency until such dues are paid: Provided, that the Board of Trustees may waive this provision for a period of not in excess of sixty (60) days with respect to any person who has been furloughed from Government service."

Then:

"Section 5. The Board of Trustees shall have authority to reject an application for membership without cause if the applicant is not an employee of the character hereinabove designated, and shall have the right, for just and reasonable cause, to reject the application for membership of any such employee, and shall have the privilege of dropping or expelling members from this organization after not less than fifteen (15) days' notice and a hearing before the Board of Trustees when, in the opinion of said Board of Trustees, the member shall have abused the privileges of the corporation in any way by imposing on the corporation by having medical aid furnished to someone not entitled to the same; or otherwise acting in such manner as to injure the corporation through his wrongful conduct. The Board of Trustees, after hearing as hereinbefore provided, shall be the sole judge of whether the conduct in question warrants expulsion from membership but membership dues shall end upon expulsion."

That was the section as adopted March 22nd, 1937. On May 25th, 1937, that section was amended to read:

"Section 5. The Board of Trustees shall reject an application for membership without cause if the applicant is not an employee of the character hereinabove designated. It shall have the right, for just and reasonable cause, to reject the application for membership of any employee, and it may drop or expel members from this corporation after not less than fifteen (15) days' notice and hearing before the Board of Trustees when, in the opinion of said Board of Trustees,

the members shall have abused the privileges of the corporation in any way by imposing on the corporation by having medical aid furnished to someone not entitled to the same; or otherwise acting in such manner as to injure the corporation through his wrongful conduct. The Board of Trustees, after hearing as hereinbefore provided, shall be the sole judge of whether the conduct in question warrants expulsion from membership and membership dues shall end upon such expulsion."

Then, on May 2nd, 1938, the section was again amended to read:

"Section 5. The Board of Trustees shall reject an application for membership without cause if the applicant is not an employee of the character hereinabove designated. It shall have the right, for just and reasonable cause, to reject any application for membership, and may drop or expel from membership, after not less than fifteen (15) days' notice and hearing before the Board of Trustees, any person who, in the opinion of said Board of Trustees, shall have abused the privileges of his membership or is otherwise guilty of wrongful conduct detrimental to the corporation or its membership. The Board of Trustees, after hearing as hereinbefore provided, shall be the sole judge of whether the conduct in question warrants expulsion from membership. Membership dues shall end upon expulsion."

Then on September 19, 1938, it was again amended to read:

"Section 5. No member may have services procured for a dependent at a time when he himself is not eligible to have services procured for himself.

Section 6. Members whose connection with the Federal branches or agencies aforesaid is severed shall have the privilege of remaining members of the corporation by payment of their monthly dues and assessments direct to the Secretary in advance. If the dues of members coming within this provision are not paid by the 10th day of the month for which such dues are payable, such members automatically lose all rights to service from the corporation and can only be reinstated to membership by action of the Board of Trustees."

This section was amended on May 25th, 1937, to read— as I read it it had been adopted March 22, 1937. Under the amendment of May 25th, it reads:

“Members whose connection with the Federal branches or agencies aforesaid is severed shall have the privilege of remaining members of the corporation by payment of their monthly dues and assessments direct to the Treasurer in advance. If the dues of members are not paid within thirty (30) days after their due date, such members automatically lose all rights to service from the corporation and can only be reinstated to membership by action of the Board of Trustees, provided, however, that notice by registered mail shall be given of this rule to any member whose connection with the Federal branches or agencies aforesaid is severed.”

Then, October 4th, 1937, the section was amended to read:

“Article II, Section 6. If the dues of members are not paid within thirty (30) days after their due date, such members automatically cease to be members and can only be reinstated to membership by action of the Board of Trustees.”

Then, on October 25, 1937, the section was amended again to read:

“Article II, Section 6. If the dues of members are not paid within sixty (60) days after their due date, such members automatically cease to be members and can only be reinstated to membership by action of the Board of Trustees.”

And then on September 19th, 1938, the section was deleted in the by-laws by an amendment of that day.

“Section 7. No new dependents added to dependent list of any member of the corporation shall be eligible for service for a period of three calendar months, with the exception of wives or newly born children who shall be eligible to service from the date of marriage in the case of a wife and from the date of birth in the case of children.”

That is the section as adopted March 22nd, 1937. On May 2nd, 1938, the section was amended to read:

“Section 7. No dependent of a member not listed on the dependent list of such member at the time he becomes a

member shall be eligible for benefits hereunder until the expiration of three calendar months after such dependent is placed on the dependent list of such member, with the exception of newly married wives or husbands, or newly born children, who shall be eligible for such benefits from the date of listing provided such listing is made not later than the one calendar month after such marriage or birth. No dependent in any case shall be eligible for benefits at a time when the member himself is not so eligible."

That was the section as amended May 2nd, 1938, and by an amendment of September 19th, 1938, that section was deleted from the by-laws.

Section 8 of this article reads:

"All certificates of membership shall be signed by the president or secretary, and shall be sealed with the corporate seal."

That is as the section was March 22nd, 1937. On May 25th, 1937, the section was amended to read:

"All certificates of membership shall be signed by the President or Secretary, or Assistant Secretary, and shall be sealed with the corporate seal."

And then Section 8 was amended on September 19th, 1938, to read:

"All certificates of membership and membership cards shall be signed by the President or Secretary, or Assistant Secretary, and shall be sealed with the corporate seal."

And then in view of the deletion of Sections 6 and 7, which I have just read and called to your attention, this article became Section 6 of Article II on the 19th day of September, 1938:

Section 9, as it stood and was numbered on March 22nd, 1937, reads:

"In case of liquidation or sale of its assets, the corporation shall have a first lien upon such dividends as may be declared due any members thereof for any indebtedness of the respective holders thereof to the corporation."

On September 19, 1938, the section was amended to read:

"In case of liquidation or sale of its assets, the corporation shall have a first lien upon such dividends as may be declared due any member hereof for any indebtedness of said member to the corporation."

Then, by reason of the deletion of Sections 6 and 7 on September 19th, 1938, this section remained but took the number Section 7, of Article II.

"Section 10. In case of loss or destruction of a certificate of membership, new certificate shall be issued in lieu thereof and shall be plainly marked 'Duplicate' upon its face."

That is as adopted March 22nd, 1937. On May 25th, 1937, the section was amended to read:

"In case of loss or destruction of a certificate of membership, new certificate shall be issued in lieu thereof and shall be plainly marked 'Duplicate' upon its face."

The section was further amended on September 19, 1938, to read:

"In case of loss or destruction of a certificate of membership or a membership card, a new certificate or membership card shall be issued in lieu thereof and shall be plainly marked 'Duplicate' upon its face."

This section took the new number 8 under the amendment of September, 1938, and for the reason already stated—because of the deletion of Sections 6 and 7.

"Article III.

"Membership Meetings.

"Section 1. An annual meeting of the members shall be held at 7:30 o'clock P. M., on the 3rd Monday in January in each year, beginning with the year 1938, at the principal office of the corporation, provided, however, that whenever such day shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day. At such meeting the members shall elect Trustees to serve until their successors shall be elected and qualified."

This section was thereafter amended on May 25, 1937, to read as follows:

"Section 1. An annual meeting of the members shall be held at 7:30 o'clock P. M. on the 3rd Monday in January in each year, beginning with the year 1938, at a place in Washington, D. C., to be designated by the Board of Trustees, provided, however, that whenever such day shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day. If the annual meeting of the membership be not held as herein prescribed, the election of Trustees may be held at any meeting thereafter called pursuant to these by-laws. At such meeting the members shall elect Trustees to serve until their successors shall be elected and qualified."

"Section 2. A special meeting of the members may be called at any time by the President or Secretary, and, in their absence, by the Vice President; or by the Trustees. It shall be the duty of the Trustees, President or Vice President to call such a meeting whenever so requested by 5% of the members."

That section was amended on May 25, 1937, to read as follows:

"Section 2. A special meeting of the members may be called at any time by the President or Secretary, and, in their absence, by the Vice President; or by the Trustees. It shall be the duty of the Trustees, or President or Vice President to call such a meeting whenever so requested by written petition of five per centum (5%) of the members of the corporation."

"Section 3. Notice of the time and place of all annual and special meetings shall be mailed by the Secretary to each member at the latter's last known address five (5) days before the date thereof."

That section was amended on May 25, 1937, to read as follows:

"Notice of time, place and purpose of all annual and special meetings shall be mailed or delivered by the Secretary or Assistant Secretary to each member at the latter's office or the last known address five (5) days before the date thereof."

"Section 4. The President, or, in his absence, the Vice President, shall preside at all such meetings."

"Section 5. At every such meeting each member shall be entitled to cast one vote, which vote may be cast by him either in person, or by proxy. All proxies shall be in writing, and shall be filed with the Secretary and by him entered of record in the minutes of the meeting.

That section was amended on May 25, 1937, to read as follows:

"Section 5. At every such meeting each member shall be entitled to cast one vote, which vote may be cast by him either in person, or by proxy. All proxies shall be in writing, and shall be filed with the Secretary or Assistant Secretary and by him entered of record in the minutes of the meeting. At all meetings of members, the voting may be by viva voce, with exception of the election of Trustees. A complete list of the members entitled to vote at the ensuing election of the Board of Trustees arranged in alphabetical order shall be prepared by the Secretary or Assistant Secretary who shall have charge of the membership list; and such list shall be filed in the office of the corporation at least ten (10) days before every election, and shall, during the usual hours for business and during the whole time of the said election, be open to the examination of any member.

"Section 6. Every member shall have the right to vote, in person or by proxy, for as many persons as there are Trustees to be elected.

That section was amended on May 25, 1937, to read as follows:

"Section 6. Every member shall have the right to vote, in person or by proxy in any election or at any meeting of the Association."

And it was amended on May 2, 1938, to read as follows:

"Section 6. Every member shall have the right to vote, in person or by proxy, in any election or at any meeting of the corporation."

"Section 7. A quorum for the transaction of business at any such meeting shall consist of at least 20% of the total

number of members of the corporation personally present, who are in good standing, but the members present at any meeting, though less than a quorum, may adjourn the meeting to a future time."

That section was amended on May 25, 1937, to read as follows:

"Section 7. A quorum for the transaction of business at any regularly called meeting shall consist of those present at any regular or special meeting."

"Article IV.

"Trustees.

"Section 1. The business and property of the corporation shall be managed and controlled by a Board of Trustees who shall be elected annually by the members on the 3rd Monday of January of each year beginning with the 3rd Monday in January, 1938. Each Trustee shall be a member of the corporation and shall receive no compensation for his services as a Trustee. Severance of such relationship by resignation or otherwise shall operate as a resignation of all office held by such Trustee.

That section was amended on May 25, 1937, to read as follows.

"Section 1. The business and property of the corporation shall be managed and controlled by a Board of eleven (11) Trustees; two of whom shall be selected by and at the pleasure of the Federal Home Loan Bank Board from the members, and the others to be elected annually by the members on the 3rd Monday of January of each year beginning with the 3rd Monday in January, 1938, provided, however, that whenever such day shall fall upon a legal holiday, the election shall be held on the next succeeding business day. Each Trustee shall be a member of the corporation and shall receive no compensation for his services as a Trustee, and severance of such relationship by resignation or otherwise shall operate as a resignation of all offices held by such Trustee."

"Section 2. The Trustees shall be elected by ballot, cast by the members of this corporation and each member shall be furnished with one ballot and an envelope in which to enclose the same, and these ballots shall be deposited at a

place or places designated by this Board before each annual election on the date thereof. The election shall be by a plurality vote and those members of the corporation receiving the largest number of votes from members hereof eligible to cast ballots for them, as hereinafter designated, shall be declared elected."

"The Board of Trustees shall appoint election tellers chosen from the membership who shall meet and canvass the vote on the day or the day following the election but no ballot shall be received which has not been cast on the election day."

That section was amended on May 25, 1937, to read as follows:

"Section 2. The nine (9) elective Trustees shall be elected by ballot, cast by the members of this corporation in person or by proxy and each member shall be furnished with one ballot and an envelope in which to enclose the same, and these ballots shall be deposited at the place designated by the Board for the annual meeting on the date thereof. The election shall be by a plurality vote and those members of the corporation receiving the largest number of votes from members hereof eligible to cast ballots for them, as hereinafter designated, shall be declared elected. Four (4) inspectors of election, none of whom shall be a Trustee, officer or employee of the corporation, shall be appointed by the Board of Trustees before or at each meeting of the members of the corporation at which an election of Trustees or amendment to the by-laws shall take place; if no such appointment shall have been made, or if the inspectors of election appointed by the Board refuse to act or fail to attend, then the appointment shall be made by the presiding officer at the meeting. The inspectors of election shall receive and take in charge all proxies and ballots and shall decide all questions of election touching upon the qualification of voters, the validity of proxies and the acceptance and rejection of votes. In case of a tie vote by the inspectors on any question, the presiding officer shall decide."

"Section 3. The Trustees elected at the next annual election shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes and if the number of Trustees be later increased to eleven members, the first class to consist of four (4) mem-

bers, the second class of a like number, and the third class of three (3) members of the Board of Trustees. The Trustees of the first class shall be elected for a term of one year; the Trustees of the second class for a term of two years; and the Trustees of the third class for a term of three years; and at each succeeding annual election the successors to the class of Trustees whose terms shall expire in that year shall be elected to hold office for the term of three years so that the term of office of one class of Trustees shall expire each year."

That section was amended on May 25, 1937, to read as follows:

"The nine (9) Trustees elected at the first annual election shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes of three members each. The Trustees of the first class shall be elected for a term of one year; the Trustees of the second class for a term of two years; and the Trustees of the third class for a term of three years; and at each succeeding annual election the successors to the class of Trustees whose terms shall expire in that year shall be elected to hold office for the term of three years so that the term of office of one class of Trustees shall expire each year. The appointees of the Federal Home Loan Bank Board shall serve at the pleasure of the Federal Home Loan Bank Board."

"Section 4. The regular meetings of the Trustees shall be held in the principal office of the corporation immediately after the adjournment of each annual membership meeting; and also on the 1st Monday of each month at the hour of 8:00 o'clock P. M., provided, however, that whenever such day shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day."

That section was amended on May 25, 1937, to read as follows:

"Section 4. The regular meetings of the Trustees shall be held at a place to be designated by standard rule of the Board of Trustees immediately after the adjournment of each annual membership meeting; and also on the 1st Monday of each month at the hour of 8:00 o'clock P. M., provided, however, that whenever such day shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day."

"Section 5. Special meetings of the Board of Trustees, to be held in the principal office of the corporation, may be called by the President or Secretary; and in their absence by the Vice President or by any three (3) members of the Board. By unanimous consent of the Trustees, special meetings of the Board may be held without notice, at any time and place."

That section was amended on May 25, 1937, to read as follows:

"Section 5. Special meetings of the Board of Trustees, to be held in the principal office of the corporation, may be called by the President or Secretary; and in their absence by the Vice President or by any three (3) members of the Board."

And it was amended on November 21, 1938, to read as follows:

"Section 5. Special meetings of the Board of Trustees, may be called by the President or Secretary; and in their absence by the Vice President or by any three (3) members of the Board."

"Section 6. Notice of all regular and special meetings, except those specified in Section 4 of this article, shall be mailed to each Trustee, by the Secretary, at least five (5) days previous to the time fixed for the meeting. All notices of special meetings shall state the purpose thereof."

That section was amended on May 25, 1937, to read as follows:

"Section 6. Notice of time, place and purpose of all special meetings shall be mailed to each Trustee, by the Secretary or Assistant Secretary, at least five (5) days previous to the time fixed for the meeting. By unanimous consent of the Trustees special meetings of the Board may be held without notice at any time and place. When a meeting is adjourned it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting other than by announcement at the meeting at which such adjournment is taken."

"Section 7. A quorum for the transaction of business at any regular or special meeting of the Trustees shall consist

of a majority of the members of the Board, personally present, but a majority of those present at any regular or special meeting shall have power to adjourn the meeting to a future time."

That section was amended on May 25, 1937, to read as follows:

"Section 7. A majority of the Trustees in office shall be necessary to constitute a quorum for the transaction of business, and the acts of a majority of the Trustees present at a meeting, at which a quorum is present, shall be the acts of the Board of Trustees."

"Section 8. The trustees shall elect the officers of the corporation, and fix their salaries; such election to be held at the Trustees' meeting following each annual membership meeting; provided, however, that the first election of officers may be held at the convenience or pleasure of the Board. Any officer may be removed at any time by a two-thirds vote of the full Board of Trustees."

That section was amended on May 25, 1937, to read as follows:

"Section 8. The Trustees shall elect the officers of the corporation; such election to be held at the Trustees' meeting following each annual membership meeting. Any officer may be removed at any time by a two-thirds vote of the full Board of Trustees."

"Section 9. The Trustees may, by resolution, appoint five (5) members of the board as an Executive Committee, to manage the business of the corporation during the interim between meetings of the Board, two of whom shall consist of members selected by the Federal Home Loan Bank Board."

That section was amended on May 25, 1937, to read as follows:

"Section 9. The Trustees may, by resolution, appoint five (5) members of the Board as an Executive Committee, to manage the business of the corporation during the interim between meetings of the Board, two of whom shall consist of members selected by the Federal Home Loan Bank Board."

The President shall be ex officio a member of the Executive Committee."

"Section 10. Any vacancy in the Board of Trustees caused by death, resignation, or otherwise, shall be elected by the Board from the Association membership to fill the vacancy at any regular or special Trustees' meeting, to serve until the next annual election, at which time the members shall elect a Trustee for the remainder of the term for which the vacating member was elected."

That section was amended on May 25, 1937, to read as follows:

"Section 10. Any vacancy in the Board of Trustees caused by death, resignation, or otherwise, shall be filled by the Board from the Association membership at any regular or special Trustees' meeting, to serve until the next annual election, at which time the members shall elect a Trustee for the remainder of the term for which the vacating member was elected, provided, however, that the Federal Home Loan Bank Board shall fill the positions vacated by its appointees."

"Section 11. At each annual membership meeting the Trustees shall submit a statement of the business done during the preceding year, together with a report of the financial condition of the corporation, and of the condition of its tangible property."

That section was amended on May 25, 1937, to read as follows:

"Section 11. At each annual membership meeting the Trustees shall submit a statement of the business done during the preceding year, together with a report of the financial condition of the corporation, and of the condition of its tangible property. They shall provide a full and complete operating statement and balance sheet."

"Article V.

"Officers.

"Section 1. The officers of this corporation shall be President, a Vice President, a Secretary, and Assistant, and a Treasurer and Assistant, who shall be elected until the next

annual membership meeting and thereafter for the term of one year, and shall hold office until their successors are duly elected and qualified. No one shall be eligible to the office of President or Vice President who is not a Trustee of the corporation; and any such officer who ceases to be a Trustee shall cease to hold office as President or Vice President as soon as his successor is elected and qualified. The offices of Secretary and Treasurer or the offices of Assistant Secretary and Assistant Treasurer may be held by one person."

The heading of Article V was amended on May 25, 1937, to read as follows:

"Article V.

"Officers and Personnel."

Section 1 was amended on May 25, 1937, to read as follows:

"Section 1. The officers of the corporation shall be President, a Vice President, a Secretary and Assistant Secretary, and a Treasurer and Assistant Treasurer, who shall be elected until the first annual membership meeting and thereafter for the term of one year, and shall hold office until their successors are duly elected and qualified. No one shall be eligible to the office of President or Vice President who is not a Trustee of the corporation; and any such officer who ceases to be a Trustee shall cease to hold office as President or Vice President as soon as his successor is elected and qualified. The offices of the Secretary and Treasurer or the offices of Assistant Secretary and Assistant Treasurer may be held by one person."

"Section 2. The President shall preside at all Trustees' and Membership meetings; shall have general supervision over the affairs of the corporation and over the other offices; if required, shall sign certificates of membership and written contracts of the corporation, and countersign all checks; and shall perform all such other duties as are incident to his office. In case of the absence or disability of the President, his duties shall be performed by the Vice President."

That section was amended on May 25, 1937, to read as follows:

"Section 2. The President shall preside at all Trustees' and Membership meetings; shall have general supervision

over the affairs of the corporation and over the other officers; if required, shall sign certificates of membership and shall sign written contracts of the corporation, and counter-sign all checks; and shall perform all such other duties as are incident to his office. In case of the absence or disability of the President, his duties shall be performed by the Vice President."

"Section 3. The Secretary, or Assistant Secretary, shall issue notices of all Trustees and Membership meetings and shall attend and keep the minutes of the same; shall be custodian of the corporate records and papers and of the seal of the corporation; shall attest with his signature and impress with the corporate seal all certificates of membership and written contracts of the corporation as directed by the President or Board of Trustees; and shall perform all such other duties as are incident to his office."

That section was amended on May 25, 1937, to read as follows:

"Section 3. The Secretary, or, in his absence, or if the Board of Trustees directs, the Assistant Secretary, shall issue notices of all Trustees' and Membership meetings and shall attend and keep the minutes of same; shall be custodian of the corporate records and papers and of the seal of the corporation; shall attest with his signature and impress with the corporate seal all certificates of membership and written contracts of the corporation as directed by the President or Board of Trustees; and shall perform all such other duties as are incident to his office."

"Section 4. The Treasurer shall be the financial and administrative officer of the corporation, having custody of all monies, funds, securities, evidence of indebtedness, and other valuable documents of the corporation. He shall receive and give receipts for money paid in on account of the corporation, and shall pay out of the funds on hand all just debts of whatever nature. He shall keep regular books of account and detailed record of the members and their standing. He shall render a full financial statement of the affairs of the corporation monthly, or when called upon by the President or Board of Trustees. He shall sign all checks, notes, drafts, or orders for the payment of money and he shall perform all such other duties as may be incident to

the office of the Treasurer, or as may be imposed on him by the Board of Trustees. He shall give the corporation a bond in such amount and with such surety as the Board shall prescribe, conditioned upon the faithful performance of the duties of his office. In the absence or incapacity of the Treasurer, the Assistant Treasurer shall act in his place or stead. Such safety deposit boxes as may be necessary shall be provided for the use of the Treasurer, to which the President may at all times have access."

That section was amended on May 25, 1937, to read as follows:

"Section 4. The Treasurer shall be the financial officer of the corporation, having custody of all monies, funds, securities, evidence of indebtedness, and other valuable documents of the corporation. He shall receive and give receipts for money paid in on account of the corporation, and shall pay out of the funds on hand all just debts of whatever nature. He shall keep regular books of account and detailed record of the members and their standing. He shall render a full financial statement of the affairs of the corporation monthly, or when called upon by the President or Board of Trustees. He shall sign all checks, notes, drafts, or orders for the payment of money and he shall perform all such other duties as may be incident to the office of the Treasurer, or as may be imposed on him by the Board of Trustees. He shall give the corporation a bond in such amount and with such surety as the board shall prescribe, conditioned upon the faithful performance of the duties of his office. In the absence or incapacity of the Treasurer, the Assistant Treasurer shall act in his place or stead. Such safety deposit boxes as may be necessary shall be provided for the use of the Treasurer, to which the President or a majority of the Trustees may at all times have access."

Article V was amended on May 25, 1937, to include the following:

"Section 5. The Board of Trustees shall employ a competent, qualified Doctor of Medicine as the Medical Director, and such assistants, orderlies, nurses or other help necessary to the proper functioning of the corporation."

Section 3 of Article V was amended on May 2, 1938, to read as follows:

"Section 5. The Board of Trustees shall contract for and in behalf of the members of this corporation, with physicians duly licensed to practice their profession in the District of Columbia, who shall render such service to the members as may be provided in said contract. One of said physicians shall be designated as the Medical Director, who, with the approval of the Trustees, may engage the services of such assistants, orderlies, nurses, or other help, in order to properly render the services contracted for."

Article V was amended on May 25, 1937, to include the following:

"Section 6. The Medical Director shall render such reports as the Board of Trustees shall require."

Section 6 of Article V was amended, on May 2, 1938, to read as follows:

"Section 6. The Board of Trustees shall in no way regulate or supervise the practice of medicine by any physician with whom it contracts for the care of members nor shall it in any way supervise, regulate or interfere with the usual professional relationship between such physician and his patient member, and every such contract entered into by and between a physician and the corporation shall contain a positive covenant to that effect."

"Article VI.

"Finance.

"Section 1. The funds of the corporation shall be deposited in such bank or trust company as the Trustees shall designate, and shall be withdrawn only upon the check or order of the Treasurer or Assistant Treasurer, countersigned by the President or Vice President. The Board shall cause audit of the books and accounts of the corporation to be made annually or oftener as it may consider proper or necessary, either by an Audit Committee appointed by the Board from the membership or by the employment of a private Certified Public Accountant."

That section was amended on May 25, 1937, to read as follows:

"Section 1. The funds of the corporation shall be deposited in such bank or trust company as the Trustees shall

designate, and shall be withdrawn only upon the check or order of the Treasurer or Assistant Treasurer, countersigned by the President or Vice President. The Board of Trustees shall cause an audit of the books and accounts of the corporation to be made annually or oftener as it may consider proper or necessary, either by an Audit Committee appointed by the Board from the membership or by the employment of a Certified Public Accountant."

"Article VII.

"Dues.

"Section 1. The dues for membership in this corporation shall be Three Dollars and Thirty Cents (\$3.30) per month for married persons or single persons having dependents, and Two Dollars and Twenty Cents (\$2.20) per month for single persons having no dependents, and shall be paid in advance semi-monthly. Where permitted, the corporation shall be given the right to require deduction for its use and benefit from the employee's wages due him from any of the federal branches or agencies by which he or she is employed the amount of his current dues together with any payment for back dues owed to the corporation.

That section was amended on April 6, 1937, to read as follows:

"Section 1. There shall be two classes of membership, i. e., (1) family membership; and (2) individual membership. Family membership shall include married or single members with dependents as hereinafter defined and the dues for membership of such class shall be \$3.30 per month. Individual membership shall include married or single members having no declared dependents, and the dues for membership of such class shall be \$2.20 per month."

Section 1 of Article VII was amended on September 19, 1938, to read as follows:

"Section 1. A member may have services procured for himself alone or for himself and any or all of his eligible dependents. A dependent is a member's spouse or a person related by blood, marriage or adoption to the member and who is supported by and lives with that member. A child dependent is a dependent who has not attained the age of 21.

“(a) Whenever a person ceases to qualify as a dependent of a member no further services shall be procured with respect to such person after the expiration of the month following the month in which he becomes disqualified.

“(b) Services shall be procured for and dues paid with respect to a child born to such member (unless previous notice to the contrary has been given the Association in writing by the member). For purposes of determining dues a child or other dependent shall remain a dependent so long as he remains eligible, until written notice to the contrary is received from the member. Any increase in dues shall be effective the first day of the month following the month in which such child is born, attains age 18 or attains age 21, as the case may be. In the event of death of a dependent or notice that such dependent is no longer to have service, the reduction in a member's dues shall be effective on the first day of the succeeding month. In the case of the death of a member or upon his written notice to the Association of his resignation, all dues shall cease on the first day of the month succeeding such death or the effective date of such notice of resignation, and after the first of such month no further services shall be procured for the member's dependents.

“(c) In case notice of withdrawal of a person from membership or withdrawal of a dependent is received in the office of the Association later than the tenth day of the month, the membership dues and the services shall cease or be decreased on the first day of the second month succeeding that in which such notice is received. It shall be the duty of every member to give written notice to the Association of any fact that would change the rate of dues or other monies payable by him.

“(d) Whenever a member desires to have services procured for any dependent (except a new born baby) who was not on”—

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“(had not previous to) September 1, 1938 (been) listed by him as a dependent in connection with his membership, he shall make application, tender \$1.00 for application fee and, unless such dependent is rejected because of physical con-

dition, such member shall thereupon be entitled to have services procured for such dependent. Such services shall be procured on and after, and the dues shall be increased on, the first day of the month succeeding the date of physical examination.

“(e) Whenever any dependent desires and is eligible to become a member, such person may apply for membership, and such application shall be given preferred consideration. Medical examination in such cases and in other cases where circumstances are unusual, may be waived for such person and/or his dependents at the option of the Board of Trustees.”

Section 1(d) of Article VII was amended, on October 3, 1938, to read as follows:

“Section 1(d). Whenever a member desires to have services procured for any dependent (except a new born baby) who was not on September 1, 1938 listed by him as a dependent in connection with his membership, he shall make application, tender \$1.00 for application fee and, unless such dependent is rejected because of physical condition, such member shall thereupon be entitled to have services procured for such dependent. Such services shall be procured on and after, and the dues shall be increased on, the first day of the month succeeding the date of physical examination.”

Section 1(b) of Article VII was amended on November 21, 1938, to read as follows:

“Section 1(b). Services shall be procured for and dues paid with respect to a child born to such member (unless previous notice to the contrary has been given the Association in writing by the member.) For purposes of determining dues a child or other dependent shall remain a dependent so long as he remains eligible, until written notice to the contrary is received from the member. Any increase in dues shall be effective the first day of the month following the month in which such child is born, attains age 18 or attains age 21, as the case may be. In the event of death of a dependent or notice, received prior to the 10th of the month, that such dependent is no longer to have service, the reduction in a member's dues shall be effective on the first

day of the succeeding month. In the case of the death of a member or upon his written notice to the Association of his resignation, received prior to the 10th day of the month, all dues shall cease on the first day of the month succeeding such death or the receipt of such notice of resignation, and after the first of such month no further services shall be procured for the member's dependents."

"Section 2. Members who join the corporation hereafter shall, for the first month, be charged dues for a full month if their application for membership is dated between the 1st and 15th of the month, and shall be charged dues for one-half month if their application is dated between the 16th and last day of the month."

Section 2 of Article VII was amended on September 19, 1938, to read as follows:

"Section 2.

"(a) All members shall be required to pay a membership fee of \$10 which shall be paid for at the rate of not less than \$1.00 per month. The first installment shall be paid not later than the due date of the member's first monthly dues following the adoption of this amendment.

"(b) Upon full payment of the membership fee a suitable certificate shall be issued to the member.

"(c) Such certificate may be transferred, upon the payment of a transfer fee in such amount as is fixed by Board regulations, to any person who is accepted as a member, provided that the person whose certificate is transferred is a person not indebted to the Association and is a member in good standing who (1) has been a member two years, or (2) who has become disqualified from membership because of severance from Government service or (3) who removes from the territory served by the Association. The transferee of a membership certificate shall by virtue of such transfer be entitled to a credit of \$10 toward his membership fee. On death of a member his certificate shall be non-transferable and shall be null and void. Whenever a member is no longer employed by the executive branch of the Federal Government, or moves from the area served by the Group Health Association, at the sole discretion of

the Trustees, such person may be repaid his \$10 membership fee or any portion he has paid the Corporation.

“(d) Proceeds of membership fees shall, in so far as possible, be used only for purchase and maintenance of equipment and other property.”

Article VII was amended on September 19, 1938, to include the following:

“Section 3.

“(a) After August 1, 1938, any person desiring to become a member shall make payment of an application fee of \$5.00, plus \$1.00 for each dependent with respect to whom he desires to have services secured and shall fill out an application on a prescribed blank or blanks. If, after review of application and medical examination of all the persons on whose behalf services are requested, the application is not accepted, this fee shall be returned, unless the person applying is otherwise eligible for membership and desires to become a member under conditions stated in the next subsection.

“(b) In the case of applications not otherwise generally acceptable by reason of the physical condition of the member or a dependent, the Association, upon the recommendation of the Medical Director, may make special membership arrangements with such applicant with respect to the services to be procured for him by the Association.”

Article VII was amended, on September 19, 1938, to include the following:

“Section 4. After August 1, 1938, every member who desires to procure services for a dependent not listed as such shall make application on a prescribed form and pay a \$1.00 application fee, which shall in no case be returned. If, after review of the application and medical examination of such dependent, the dependent is not generally acceptable by reason of physical condition, the Association upon the recommendation of the Medical Director may make special membership arrangements.”

Article VII was amended, on September 19, 1938, to include the following:

"Section 5. Membership dues shall for September 1938 and thereafter be payable the first of each month and shall be as follows:

Single member or head of family	\$2.20
Husband or wife	1.80
Child dependents under 18 (one or more)	1.00
Child dependents, 18 to 21 (each)	1.00
Adult dependents over 21 (each)	2.00

New memberships shall become effective and dues payable on the first day of the month following acceptance of the person for membership or upon the 16th day of the same month if the Board so directs."

Article VII was amended, on September 19, 1938, to include the following:

"Section 6. Any indebtedness of a member to the Association shall be added to and considered a part of the dues for the month succeeding that in which the indebtedness was incurred provided, however, that the Board of Trustees in its discretion may permit the payment of any indebtedness to be made in installments or forgive a portion or all of said indebtedness when the Trustees find that in equity and good conscience such action shall be taken. In the case of indebtedness other than for the monthly dues, the member shall be promptly notified of the amount of the indebtedness."

Article VII was amended, on September 19, 1938, to include the following:

"Section 7. Except by amendment of these By-laws, no fees, dues or assessments of any kind not herein provided, shall be required of any member of the Association.

"Article VIII

Resignations

Section 1. Any member of this corporation may withdraw therefrom by resignation and shall owe in such case dues for only thirty (30) days from the date of his or her resignation, he or she to have the privileges of membership during said thirty (30) day period. (As adopted March 22, 1937.)"

Section 1 of Article VIII was amended on May 25, 1937, to read as follows:

"Section 1. Any member of this corporation may withdraw therefrom by resignation and shall owe in such case dues for only thirty (30) days from the date of his or her resignation, he or she to have the privileges of membership during said thirty (30) day period, provided, however, that the member may withdraw his resignation in writing within the said period."

Article VIII was repealed on September 19, 1938.

"Article IX

Amendments

Section 1. Amendments to these by-laws may be made, by affirmative vote of a two-thirds majority of the Trustees of the corporation present and voting at any regular meeting or at any special meeting when the proposed amendment has been set out in the notice of such meeting. (As adopted March 22, 1937.)"

Section 1 of Article IX was amended, on May 25, 1937, to read as follows:

"Section 1. Amendments to these by-laws may be made, by affirmative vote of a two-thirds majority of the Trustees of the corporation at any regular meeting or at any special meeting when the proposed amendment has been set out in the notice of such meeting."

Section 1 of Article IX was amended, on September 19, 1938, to read as follows:

"Section 1. Amendments to these by-laws shall be made, by affirmative vote of a two-thirds majority of the Trustees of the Association at any regular meeting of the Trustees or at any special meeting of the Trustees when the proposed amendment has been set out in the notice of such meeting; except, that any amendment to this article, or any amendment required by section 9 of article VII shall become effective only after written notice to members and the affirmative vote for such amendment by a majority of those voting."

Section 1 of Article IX was amended, on October 3, 1938, to read as follows:

"Section 1. Amendments to these by-laws shall be made, by affirmative vote of a two-thirds majority of the Trustees of the Association at any regular meeting of the Trustees or at any special meeting of the Trustees when the proposed amendment has been set out in the notice of such meeting; except, that any amendment to this article, or any amendment required by section 7 of article VII shall become effective only after written notice to members and the affirmative vote for such amendment by a majority of those voting.

Article X

Benefits.

Section 1. To be able to avail themselves of medical and surgical service, the members must be located in, or its closely and adjacent territory, or must come to, the City of Washington, D. C. (As adopted March 22, 1937)"

Section 1 of Article X was amended, on April 6, 1937, to read as follows:

"Section 1. The medical service to be rendered to members and dependents by the corporation shall be as follows:

Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes; laboratory tests, X-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (2 bed room) limited to a period not to exceed 21 days for any one illness. However, members desiring to occupy a private room may do so in which case the corporation will contribute the sum of \$4.00 per day toward the expense of such room for such period. In all hospital cases, the corporation will pay for semi-private room (2 bed room) service only, except in the case of infectious or contagious diseases, in which case a maximum of \$4.00 per day will be paid for said period.

The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

Section 1 of Article X was amended, on May 25, 1937, to read as follows:

"Section 1. The medical service to be rendered to members and dependents by the corporation shall be as follows:

Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes; laboratory test, X-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (2 bed room) limited to a period not to exceed 21 days for any one illness. However, members desiring to occupy a private room may do so, in which case the corporation will contribute the sum of \$4.00 per day toward the expense of such room for such period. In all hospital cases, the corporation will pay for semi-private room (2 bed room) service only, except in the case of infectious or contagious diseases, in which case a maximum of \$4.00 per day will be paid for such period, not exceeding 21 days.

The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

Section 1 of Article X was amended, on October 25, 1937, to read as follows:

"Article X, Section 1. The medical service to be rendered to members and dependents by the corporation shall be as follows:

Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes, laboratory tests, X-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (two-bed room) or a private room, limited in either case to a period not to exceed 21 days for any one illness; provided, however, that each member desiring to occupy a private room shall reimburse the corporation for so much of the cost of such room as shall exceed the sum of \$4.00 per day; provided, further, that such member shall make such payments to assure such

reimbursement as the corporation shall require, and provided, that the benefits provided outside of the territory of the association shall be limited to the provision of a hospital room for the time and as is herein provided.

The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

Section 1 of Article X was amended, on May 2, 1938, to read as follows:

"Section 1. The contract or contracts to be made by this corporation on behalf of the members thereof with physicians, as provided in Section 5 of Article V, or with others, shall provide for the following services to members:

Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes, laboratory tests, X-ray examinations, surgical operations, confinement cases, and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (two-bed room) or a private room, limited in either case to a period not to exceed 21 days for any one illness; provided, however, that each member desiring to occupy a private room or a semi-private room of his own choice shall pay so much of the cost of such room as shall exceed the sum of \$4.00 per day; provided, further, that such member shall make such advance payments to assure the aforesaid reimbursement as the Trustees shall require; and provided, further, that the benefits provided outside of the territory of the association shall be limited to the provision of a hospital room for the time and as is herein provided.

Members or dependents in order to avail themselves of medical and surgical service shall come to the doctor's office if such is possible from the nature of their illness. Doctors will answer necessary house calls within a radius of ten miles from the District of Columbia line, except that the Medical Director may provide for house calls not exceeding twenty miles. Members will furnish such doctor with any information he may request relative to their condition and membership and should, at all times, have available their membership card for identification.

The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

Section 1 of Article X was amended, on September 19, 1938, to read as follows:

"Section 1. The contract or contracts to be made by this corporation on behalf of the members thereof with physicians, as provided in these by-laws, or with others, shall provide for the following services:

Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes, laboratory tests, X-ray examinations, surgical operations, confinement cases, and professional consultations, nursing and ambulance facilities, house calls and hospitalization in a semi-private (two-bed room) or a private room, limited in either case to a period not to exceed 21 days for any one illness or accident and not to exceed a total of 42 days for any member or dependent during any one calendar year; provided, however, that when a member desires a private room or a semi-private room of his own choice for himself or his dependent he shall pay so much of the cost of such room as shall exceed the sum of \$4.00 per day; provided, further, that each member shall make such advance payments or other arrangements to assure the said payment as the Trustees shall require; and provided, further that the services procured outside of the territory of the Association shall be limited to the provision of hospital facilities for the time and as is herein provided.

No hospitalization, and no service except that given under such contract or contracts shall be procured for any member or dependent, save upon prior written authorization by the Medical Director; Provided, that in cases of emergency, subsequent ratification by the Medical Director shall have the same effect as prior authorization; provided, however, that the Medical Director may not ratify any services save hospitalization procured outside of the service area.

Any hospitalization procured shall be limited in time to the date of the patient's discharge or such shorter time as the Medical Director may deem proper.

Hospitalization shall be construed to mean: (a) bed and board in a hospital, (b) general nursing care, (c) use of

the operating room or delivery room when necessary, (d) services of an anesthetist, (e) ordinary surgical dressing, (f) ordinary medications, and (g) routine laboratory examinations; except that where hospitalization is procured outside the service area or without prior authorization by the Medical Director, no more than \$15 may be allowed for the use of the operating or delivery room and no more than \$10 may be allowed for the services of an anesthetist.

Members or dependents, in order to avail themselves of medical and surgical service, shall report to the clinic if such is possible from the nature of their illness. Doctors will answer necessary house calls within ten miles from the District of Columbia line, as provided in this article, and the Medical Director may provide for house calls not exceeding twenty miles. Members will furnish such doctor with any information he may request relative to their condition and membership and should, at all times, have available their membership cards for identification.

The extent that medical service relating to the foregoing items will be furnished shall be determined and prescribed by the Medical Director or his representative in each individual case.

Section 2. Any person referred to herein as a dependent, to be eligible to the benefits of the corporation, must be totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service. However, under this provision persons who are working and receiving compensation for their services are not dependent, with the exception of wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts medical attention from a corporation doctor, or who has medical services performed for any person who he claims is dependent upon him and who is found not to be entitled to such medical service, shall reimburse the corporation for any payment the corporation may have made on his account, and, further, shall pay the corporation for the services of the doctor who attended the case, or the corporation may cause the same to be deducted from the wages due such employee as provided in Section 1 of Article VI of these by-laws. (As adopted March 22, 1937)"

Section 2 of Article X was amended, on April 6, 1937, to read as follows:

"Section 2. The following medical service will not be furnished by the corporation:

- (1) Treatment of industrial accident cases;
- (2) Surgery of the brain or nervous system;
- (3) Mental cases, tuberculosis, drug or alcohol addiction; these cases will be treated only up to the time that the Medical Director recommends confinement in an institution."

Section 2 of Article X was amended, on May 25, 1937, to read as follows:

"Section 2. The following medical service will not be furnished by the corporation:

- (1) Treatment of industrial accident cases;
- (2) Surgery of the brain or nervous system;
- (3) After the time that the medical director recommends confinement in an institution in mental, tubercular, drug or alcohol addiction cases."

Section 2 of Article X was amended, on May 2, 1938, to read as follows:

"Section 2. The contract or contracts to be made by this corporation on behalf of the members, with physicians, as provided in Section 5 of Article V of these by-laws, or with others, shall not provide for the following services to members:

- (1) Treatment of industrial accident cases;
- (2) Surgery of the brain or nervous system;
- (3) Any treatment after the time that the Medical Director recommends commitment to an institution in mental, tubercular, drug or alcohol addiction cases."

Section 2 of Article X was amended, on September 19, 1938, to read as follows:

"Section 2. The contract or contracts to be made by this Association on behalf of the members, with physicians, as

provided in these By-laws, or with others, shall not provide for the following services:

- (1) Treatment of industrial accident cases where treatment is provided under Federal or State Employees Compensation Laws to the extent of such provision;
- (2) Surgery of the brain or nervous system;
- (3) Any treatment after the time that the Medical Director recommends commitment to or hospitalization in an institution in mental, tubercular, drug, or alcohol addiction cases.

Section 3. In all hospital cases, the corporation will pay for semi-private room, except in the case of infectious or contagious disease, in which case a maximum of Five (\$5.00) Dollars per day will be paid. (As adopted March 22, 1937)''

Section 3 of Article X was amended, on April 6, 1937, to read as follows:

''Section 3. The members shall pay for the following items:

- (1) Medicines, drugs, surgical appliances such as orthopedic devices and crutches; eye glasses, artificial limbs or eyes and hearing devices;
- (2) Radium and deep X-ray treatments;
- (3) Dental work;
- (4) Oxygen tanks or tents and materials;
- (5) Blood transfusions;
- (6) Special nursing service if not ordered by the Medical Director;
- (7) Treatment, services, supplies and other items prescribed or ordered by an 'outside doctor' including his fees.
- (8) Treatment of venereal diseases at the rate of Fifty Cents (\$0.50) per treatment.
- (9) Hospitalization in excess of that mentioned above.

The corporation shall make an effort to secure at reduced rates all the medical services and items for which the member is required to pay."

Section 3 of Article X was amended, on May 2, 1938, to read as follows:

"Section 3. Any contract entered into by the corporation on behalf of its members will require the members to pay for the following:

(1) Medicines, drugs, surgical appliances, such as orthopedic devices and crutches; eye glasses; artificial limbs or eyes; and hearing devices;

(2) Radium and deep X-ray treatments;

(3) Dental work;

(4) Oxygen tanks or tents and materials;

(5) Blood transfusions;

(6) Special nursing service if not ordered by the Medical Director;

(7) Treatment, services, supplies and other items prescribed or ordered by a physician not in a contractual relationship with the corporation and its member, but employed by an individual member, including fees of such physician.

(8) Treatment of venereal diseases at the rate of Fifty Cents (50¢) per treatment.

(9) Hospitalization in excess of that mentioned in Section 1 of this article.

The corporation shall make an effort to secure at reduced rates all the medical services and items for which the member is required to pay."

Section 3 of Article X was amended, on September 19, 1938, to read as follows:

"Section 3. Any contract entered into by the Association in behalf of its members will require the members to pay for the following:

(1) Medicine, drugs, surgical appliances, such as orthopedic devices and crutches; eye glasses; artificial limbs or eyes; and hearing devices;

(2) Radium and deep X-ray treatments;

(3) Dental work and dental X-rays;

- (4) Oxygen tanks or tents and materials;
- (5) Blood transfusions;
- (6) Special nursing service if not ordered by the Medical Director;
- (7) Treatment, services, supplies and other items prescribed or ordered by a physician not in a contractual relationship with the Association and its members, but employed by an individual member, including fees of such physicians.
- (8) Hospitalization in excess of that mentioned in Section 1 of this article, provided, however, that in confinement cases the member shall in every case bear the first \$25 of hospitalization expense.
- (9) For each house call the member shall reimburse the association for travel expense of the physician in an amount not exceeding \$1.00; provided that no charge shall be made for travel expense for additional house calls after the first, made at the instance of the attending physician.

Section 4. No member of this corporation or any of his or her dependents shall request the corporation doctor to call at his or her residence if such person is able to call at the doctor's office. Doctors will answer necessary house calls within a radius of ten miles from the District line. Members will, upon request of the corporation doctor, furnish such doctor with any information he may request relative to their eligibility to benefits from the corporation and should, at all times, have available their card for identification. (As adopted March 22, 1937)"

Section 4 of Article X was amended, on April 6, 1937, to read as follows:

"Section 4. The corporation will not assume responsibility for furnishing unlimited medical service to members but will do so only to the extent of its resources and to the extent which, in each case, is considered desirable and necessary by the Medical Director."

Section 4 of Article X was amended, on May 25, 1937, to read as follows:

"Section 4. The corporation will not assume responsibility for furnishing unlimited medical service to members but will do so only to the extent of its resources."

Section 4 of Article X was amended, on October 4, 1937, to read as follows:

"Article X, Section 4. The corporation does not provide insurance for its members but only undertakes to provide medical and hospitalization service for them as herein stated, and in any event will furnish such service only to the extent of its resources."

Section 4 of Article X was amended, on October 25, 1937, to read as follows:

"Article X, Section 4. The corporation does not provide insurance for its members but only undertakes to provide medical and hospitalization service for them as herein stated, and in any event will furnish such service only to the extent of its resources."

Section 4 of Article X was amended, on May 2, 1938, to read as follows:

"Section 4 (a). The corporation does not guarantee that it will provide any or all of the services above specified and for which it will attempt to contract on behalf of its members and it shall not be liable to any member or his dependent in any manner whatever if it should for any reason, including lack of funds, be unable to procure any or all of said services when called upon to do so.

(b). The corporation does not guarantee that any physician or physicians with whom it may enter into a contract to render services to its members will perform such contract and its only obligation in the event of the breach of such contract by any physician shall be to use its best effort to procure the needed services from another source.

(c) The corporation shall not be liable to its members or their dependents for any act of omission or commission on the part of physicians or other persons with whom it may contract for the rendition of services to its members and their dependents."

Section 4 of Article X was amended, on September 19, 1938, to read as follows:

"Section 4 (a). The Association does not guarantee that it will provide any or all of the services above specified and for which it will attempt to contract on behalf of its mem-

bers and it shall not be liable to any member or his dependent in any manner whatever if it should for any reason, including lack of funds, be unable to procure any or all of said services when called upon to do so.

(b) The Association does not guarantee that any physician or physicians with whom it may enter into a contract to render services will perform or properly perform such contract, and its only obligation in the event of the breach of such contract by any physician shall be to use its best effort to procure the needed services from another source.

(c) The Association shall not be liable to its members or their dependents for any act of omission or commission on the part of physicians or other persons with whom it may contract for the rendition of services to its members and their dependents.

Section 5. Any member of the corporation who incurs hospital expense on account of himself or a dependent previously listed with the corporation, as a result of sickness or accident while absent from the territory served by the corporation, shall be reimbursed, upon certification of the physician in attendance, all or any part of such expense, but no amount will be paid in any case in excess of what would have been paid had the service occurred in the territory served by the corporation. Whenever any sickness or injury shall be caused to the member, or his dependent, by the tort of a third person and that person should pay for the medical or other expenses growing out of said injury, this corporation shall be subrogated to and be entitled to reimbursement for the medical or other services furnished and for which said member has collected from said third person. (As adopted March 22, 1937)"

Section 5 of Article X was amended, on April 6, 1937, to read as follows:

"Section 5. The Trustees shall have the right to determine and modify the extent of the service to be furnished to members at any time they may decide to do so upon written notice to the members to that effect given fifteen (15) days prior to any such change."

Section 5 of Article X was amended, on September 19, 1938, to read as follows:

"Section 5. The Trustees shall have the right to determine and modify the extent of the service to be furnished to members at any time they may decide to do so upon written notice to the members to that effect given fifteen (15) days prior to any such change."

Article X, on April 6, 1937, was amended to include the following:

"Section 6. To be able to avail themselves of medical and surgical service, the members or dependents must be located in, or within ten miles of the District of Columbia line, or must come to, the City of Washington, D. C."

Section 6 of Article X was amended, on May 25, 1937, to read as follows:

"Section 6: To be able to avail themselves of medical and surgical service, the members or dependents must be located in, or within ten miles of the District of Columbia line, or must come to, the City of Washington, D. C., except that the Medical Director may provide for house calls not exceeding twenty miles."

By amendment on October 25, 1937, Section 6 of Article X was deleted.

Article X, on April 6, 1937, was amended to include the following:

"Section 7. Any person referred to herein as a dependent, to be eligible to the benefits of the corporation, must be totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service. However, under this provision persons who are regularly working and receiving compensation for their services are not dependent, with the exception of wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts medical attention from the corporation doctor, or who has medical services performed for any person who he claims is dependent upon him and who is found not to be entitled to such medical service, shall reimburse the corporation for any payment the corporation may have made on his account, and, further, shall pay the corporation for the services of the doctor who attended the case, or the corporation may cause the same

to be deducted from the wages due such employee as provided in Section 1 of Article VI of these by-laws."

Section 7 of Article X was amended, on May 25, 1937, to read as follows:

"Section 7. Any person referred to herein as a dependent, to be eligible to the benefits of the corporation, must be totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service. However, under this provision persons who are regularly working and receiving compensation for their services are not dependent, with the exception of wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts medical attention from the corporation doctor, to which he is not entitled, or who has medical services performed for any person not entitled thereto shall reimburse the corporation for any payment the corporation may have made on his account, and, further, shall pay the corporation for the services of the doctor who attended the case, or the corporation may cause the same to be deducted from the wages due such employee."

Section 7 of Article X was amended, on October 25, 1937, to read as follows:

"Article X, Section 7. Any person referred to herein as a dependent, to be eligible to the benefits of the corporation, must be totally dependent upon the member of the corporation for a livelihood at the time of such person's disability and before need of medical service. However, under this provision persons who are regularly working and receiving compensation for their services are not dependent, with the exception that wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts medical attention from the corporation doctor, to which he is not entitled, or who has medical services performed for any person not entitled thereto, shall reimburse the corporation for the cost, or, at the option of the corporation, the reasonable value, of any services rendered by the corporation on his account, and, further, shall pay the corporation for the services of the doctor who attended the case, or the corporation may cause the same to be deducted from the wages due such employee."

“(This section becomes Section 6 by amendment of October 25, 1937.)”

Section 6 of Article X was amended, on May 2, 1938, to read as follows:

“Section 6. Any person referred to herein as a dependent, to be eligible to the benefits of the corporation, must be totally dependent upon a member of the corporation for a livelihood prior to and at the time of such person's disability and prior to and at the time of need of medical service. Under this provision persons who are regularly working and receiving compensation for their services are not dependent, with the exception that wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts benefits hereunder to which he is not entitled, or who secures such benefits for any person not entitled thereto, shall pay a penalty commensurate with the value of the services so received as may be determined by the Board of Trustees.”

Article X, on April 6, 1937, was amended to include the following:

“Section 8. No member of this corporation or any of his or her dependents shall request the corporation doctor to call at his or her residence if such person is able to call at the doctor's office. Doctors will answer necessary house calls within a radius of ten miles from the District of Columbia line. Members will, upon request of the corporation doctor, furnish such doctor with any information he may request relative to their condition and eligibility to benefits from the corporation and should, at all times, have available their associate or membership card for identification.”

Section 8 of Article X was amended, on May 25, 1937, to read as follows:

“Section 8. Members or dependents in order to avail themselves of medical and surgical service shall come to the doctor's office if such is possible from the nature of their illness. Doctors will answer necessary house calls within a radius of ten miles from the District of Columbia line, except that the Medical Director may provide for house

calls not exceeding twenty miles. Members will, upon request of the corporation doctor, furnish such doctor with any information he may request relative to their condition and eligibility to benefits from the corporation and should, at all times, have available their associate or membership card for identification."

Section 8 of Article X was amended, on October 25, 1937, to read as follows:

"Article X, Section 8. Members or dependents in order to avail themselves of medical and surgical service shall come to the doctor's office if such is possible from the nature of their illness. Doctors will answer necessary house calls within a radius of ten miles from the District of Columbia line, except that the Medical Director may provide for house calls not exceeding twenty miles. Members will, upon request of the corporation doctor, furnish such doctor with any information he may request relative to their condition and eligibility to benefits from the corporation and should, at all times, have available their associate or membership card for identification.

(This section becomes Section 7 by amendment of October 25, 1937.)"

Section 7 of Article X was repealed on May 2, 1938.

Article X, on April 6, 1937, was amended to include the following:

"Section 9. Any member of the corporation who incurs hospital expense on account of himself or a dependent previously listed with the corporation, as a result of illness falling within the by-laws and rules of the corporation, or accident while absent from the territory served by the corporation, shall be reimbursed, upon satisfactory certification or evidence thereof by the attending physician approved by the Medical Director of this corporation, all or any part of such expense, but no amount will be paid in any excess of what would have been paid had the illness or accident occurred in the territory served by the corporation. Whenever any illness or injury shall be caused to the member or his dependent by the tort of a third person and that person should pay for the medical or other expense growing out of said injury, this corporation shall be subrogated to and be entitled to reimbursement for the medical or other

services furnished by it and for which said member has collected from said third person."

Section 9 of Article X was amended, on May 25, 1937, to read as follows:

"Section 9. Any member of the corporation while temporarily absent from the territory served by the corporation, who incurs hospital expense on account of himself or a dependent previously listed with the corporation, as a result of illness or accident falling within the by-laws and rules of the corporation, shall be reimbursed, upon satisfactory certification or evidence thereof by the attending physician approved by the Medical Director of this corporation, all or any part of such expense, but no amount will be paid in any case in excess of what would have been paid had the illness or accident occurred in the territory served by the corporation. Whenever any illness or injury shall be caused to the member or his dependent by the tort of a third person and that person should pay for the medical or other expense growing out of said injury, this corporation shall be subrogated to and be entitled to reimbursement for the medical or other services furnished by it for which said member has collected from said third person."

Section 9 of Article X was deleted by amendment of October 25, 1937.

Thereupon the defendants read to the jury from the minutes of the executive meeting of October 25, 1937, of the Medical Society (Gov. Ex. 37) as follows:

(Excerpt)

"Dr. Thomas E. Neill presented a complete discussion of present problems and modes for correction as written by Dr. John H. Trinder. The secretary was instructed to read this in detail."

The defendants then proposed to read said statement of Dr. John H. Trinder. The statement of Dr. Trinder referred to and contained in said minutes was then objected to by the Government as a self-serving, argumentative discourse in favor of the defendants' theories, coming from a third party, and that the defendants did not request this portion of the minutes to be read by the Government. The

defendants contended that the statement was presented to the Society by the defendant Dr. Neill, was read as a full discussion of the problems discussed at the meeting, and pointed out that portions of the minutes of this particular meeting had already been read in evidence by the Government as relevant to the conspiracy charged, and that the entire minutes of the meeting were admissible to show the entire proceedings of that evening.

The defendants offered to prove the contents of the John Trinder statement appearing as a part of the minutes of October 25, 1937, reading as follows:

"Statement Prepared by Dr. John H. Trinder

"The medical profession of the District of Columbia is now confronted by an impending inroad upon its status as a very necessary part of the social economy, which will not only be disastrous to its members individually and collectively, but will affect the medical profession of the country as a whole. It will also react unfavorably upon the public, in that it advents a type of medical service which will eventuate into a commercialization of an art and science which has within the last 30 years alone, extended the space of life 20 years.

"Medical service, and by this general term, I mean also surgery, cannot be weighed out in ounces and pounds, or be measured in inches or yards and wrapped up in a neat package and be taken home or delivered. It has no such tangible property, but is based upon the personal service of a highly trained individual, whose medical degree is backed by a long academic preparatory study and post-graduate clinical application. And as a further evidence of his qualification to practice his art each doctor must pass a licensure board, local or national, which determines his skill, knowledge and fitness to serve the public.

It is not my intention to review the past accomplishments of medicine and its unselfish endeavors in combatting disease and pestilence. But I mention in passing the names of Jenner, through whose efforts and sacrifices, vaccination against smallpox was instituted. In the Middle Ages this disease was the scourge of Europe, and decimated the population. Of Pasteur, whose researches gave us the prevention and cure of dread hydrophobia. Of Walter Reed, whose discovery of the transmission of yellow fever,

stripped this pestilence of its epidemic character, and eventually made possible the building of the Panama Canal. The results of his discovery spurred the research into other host-borne diseases, as malaria; typhus fever, the protozoan infections, tularemia, hook-worm disease and many others. Now the tropics and the semi-tropical countries, have been made healthful places in which to live. Of Russel, Craig and Nichols, through whose efforts anti-typhoid serum was perfected, and the greatest scourge of armies and other expeditions in the field has been eradicated. Others, too numerous to mention have devoted their lives unselfishly to study and research in order to relieve human suffering, and the annals of medicine are filled with the names of many who have actually laid down their lives through infections incurred in their researches.

Were these men inspired by any ulterior commercial motives? Were they units of organizations or bureaus, which have sold their labors to the public in exchange for a mere pittance? Any one with common sense and human intelligence knows that they were inspired by a love of their profession and an unselfish desire to help their fellowmen. There are many such researchers in the field of medicine and surgery today, still struggling to follow their noble example.

The average conscientious doctor is made in the same mold, and while he must make a decent living to maintain his place in the social order, he is at all times ready to give his best for his patients. To give them his individual thought and effort, irrespective of time, weather conditions or personal problems in his own life. Can such a man be regimented in a commercial group, selling his services for an annual competence, knowing that his efforts are resold much as groceries or other commodities, and still retain his personal touch and interest in patients who are likewise regimented, and given a numbered card, for which they pay a mere monthly pittance? If he punches a time clock, will he retain his individuality, and interest, and pride in his profession?

Let us discuss the medical service the beneficiary will get for his monthly prepayment.

1. His selection of a doctor for the attention he needs will be limited to the staff of doctors of the corporation. In the appointment of this staff he will have had no voice.

Thus he will forego what is his inalienable right—the choice of his own physician. In some cases this will at first be of no apparent importance, and if given a thought at all the conclusion will be that one will do as well as another for the particular ailment. This may hold good in the less serious illnesses. But along comes a grave illness, in which the question of invalidism or even the final call may be imminent. Then the physician of their own choice, one who can play the role of friend and counselor, as well as healer, is needed. Will the overworked regimented corporation doctor, who keeps hours from 8 A. M. to 4 P. M., whose clientele is made up of cases, card indexed for filing, who is on a salary, which does not increase as his work piles up, respond in the small hours of the morning when the crisis comes or an emergency arises? If called for such exigency, will he not be inclined to say, "Come to the office at 9 o'clock in the morning"? Will he have the personal interest the family doctor has in his patients? Say that his remuneration be based upon the number of patients he attends. In such a case the fee per person will necessarily be the minimum for which he is willing to sell himself to the corporation, and again, his clients are numbers, stripped of personal interest, and he becomes like the craftsman doing piecework. Do you wish the most valuable thing you have, your health, to be bartered for in such a cold blooded commercial manner?

2. Detailed facts of the most intimate character, past and present, are necessarily acquired by the physician in his role of administering to the ill, mental and physical, of his patients. Such information is adjudged by law to be privileged communications, and to be held as inviolate as those of the confessional of the Catholic Church. The physician is even more closely bound in secrecy than the priest. The information he obtains is as a rule stripped of the emotionalism of the confessional; and much of it obtained by deduction and analogy, of which fact the patient is usually fully aware. This most confidential status of the followers of the healing art was recognized by Hippocrates, one of the founders of medicine, dating back to the early Grecian period. This wise physician and teacher had the foresight to bind his pupils by an oath, one of the provisions of which oath relates to this sacred niche in which the physician is placed by reason of his knowledge of the most inti-

mate details of his patients. And to this day before he is awarded his diploma, the physician must swear that he will never reveal any of the secrets given him to lock up.

Now will the histories of beneficiaries of a prepaid health bureau, histories often containing details which are for only the physician to see, be treated in the same inviolable manner? Will they not be classed as public or semipublic records, open to many whose only interest is one of morbid curiosity?

This is the greatest argument for the insistence of every individual to exercise his right in choosing his own physician. When he subscribes to any prepayment plan offered by a corporation illegally practicing medicine, he forfeits that sacred privilege. Does the cleverly worded prospectus and propagandum put out to ensnare its victims give these and other facts relative to the kind of service such corporate setup can only give? No. It is not even hinted between the lines. Read carefully what the prospects offer. Has not the proposed health insurance clinic of the Home Owners' Loan Corporation, a Bureau of the Government, a semiofficial status? If so, will its records not also be open to others than its hired doctors? In passing, does the above corporation practice the same sort of philanthropy toward those who are legally entitled to assistance in building new homes for themselves, or renovating old ones? If you look into the matter you will find that its policies are laid down according to the strictest interpretation of real estate law and procedure. Its subscribers are bound by just as legally tight mortgages as any accomplished by lay financial and realty companies. The daily papers cited instances in which these mortgages are foreclosed, when the holders encounter further financial difficulties.

Will not the same policy be followed in the cases of its health beneficiaries, who default in their prepayments? Of course, as it is a cold business proposition, lacking in its very conception the attributes upon which the practice of medicine is founded.

3. Let us say that the contract doctor makes an error in diagnosis, or judgment, gives an overdose of a potent drug, or makes a mistake in operating, and the patient is invalidated for life, or some more serious consequence ensues. To whom can the patient or relatives look for redress? Certainly not the doctor, for the unfortunate patient did

not employ him. He had no choice but what was furnished by the corporation, and the injured party must look to the said corporate body for redress. Experience has shown that the chances of obtaining justice or consideration from such a setup are very slim. Taken to court the said corporation has the money to employ competent lawyers, funds which you and your associates have contributed.

4. In epidemics, which are likely to come at any time, can the overworked members of the contract staff adequately meet the demands made upon them? You reply that you may then turn to the other doctors in the community. You, you can now, but let this vicious system of panelized medicine, get its strangle hold upon its victims, and there will be no longer the incentive for good men to dedicate their lives to the healing art, and those few who are rash enough to study medicine will be so demoralized at the prospects of making a decent living, that they will either seek a contract with the monster corporation or turn to other fields. Such a system can only result in a lowering of the standards of medicine as we know it today. In fact, the family doctor, and the well-trained specialist of today, will fade out of the picture.

Now a word to the effect of this system of socialized, commercialized, communistic brand of medicine upon the other professions and business in general. After the medical profession has been properly panelized and throttled, will not the octopus look around for other victims? There are the dentists and lawyers to be subsidized. The retailers of the necessities of life, as food, clothing, housing, even entertainment and recreational enterprises can likewise be sovietized. The automobile industry can be brought within the confines of the system, and also the railroads. In fact, most every human enterprise can be made to bow to the will of the corporate monster. Why not go the whole way and set up another soviet? But take counsel and see where you will be, a mere stockholder, paying your pittance to maintain a small minority, the directors of the corporation in opulence and security, their tables overflowing with milk and honey, and you eating of the crumbs.

What have the doctors themselves done to meet the effects of the depression on those in the lower bracket incomes? This can best be discussed by citing what the local profes-

sion, as represented by the District of Columbia Medical Society, has initiated.

1. In conjunction with a number of public-minded laymen, the Group Hospitalization idea was crystallized into concrete working form, and is now successfully functioning in furnishing 21 days' hospitalization a year to its beneficiaries for the nominal prepayments of 75 cents a month. This move was inaugurated about 3 years ago, and is now functioning as an integral part of the Social Welfare of the community. It operates under a competent manager with an adequate office force, under the supervision of a Board of Governors consisting of public-minded laymen and members of the local medical profession. The Board serves without remuneration.

2. The Medical-Dental Service Bureau is an organization to which persons in the lower bracket incomes can apply when in need of medical services. It has a staff of economic experts, who look into the budgets of the applicants and after ascertaining in a general way their medical needs, refer them to practicing physicians with a brief statement of their status, with a recommendation that the fees for services be graded in such manner that no burden will be imposed upon the budget of the applicant. The doctors are heartily cooperating with the Bureau. This organization was initiated by and primarily financed by the Medical Society of the District.

3. The Central Admitting Bureau is likewise an organization started and initially financed by the Medical Society. Its function is to go into the financial condition of the indigent and semi-indigent, who are mostly referred by the hospital dispensaries and the doctors themselves. It has a tie in with the Community Chest, in that after it has determined that the individual applicant is worthy of and entitled to the assistance of the Chest Fund, he is referred to a hospital with a written statement citing his ability to make part payment or in many cases nothing at all, and his account is underwritten by the Bureau, to be paid out of the Chest Fund.

Both of the latter two Bureaus are managed by competent executives, and economic experts, under the supervision of Boards made up of physicians appointed by the Medical Society. The latter bodies serve without remuneration.

Now for the services which physicians themselves have rendered individually, and are now constantly giving to the indigent without stint or hope of reward. Every hospital in the District and for that matter, throughout the country, is staffed by a corps of doctors, carefully selected according to ability and ethical standing, who give of their time in the dispensaries, laboratories and the operating rooms without pay. These services are given unselfishly and willingly as their contribution to the community welfare. To give a better idea of such a contribution, it has been estimated that in the D. C., alone it amounts in dollars and cents to around \$3,000,000.00 per annum, greater than the gifts of the general public to the Community Chest. What other class, professional or commercial, makes such a free-will offering to suffering humanity.

Many physicians have patients in their private practices, persons who have been at one time in the higher bracket incomes, who have through no fault of their own, become without means to meet their obligations, who are given the best the doctors have, the latter knowing that hope of remuneration is very doubtful. It is true that in many cases, when such patients have recovered in whole or in part, their former financial positions, they often show their appreciation by recognizing their obligation by payment in part or in whole for the services rendered in their time of need.

Do the retailers of the necessities of life, as food, clothing, housing, etc., thus give of their merchandise, their services and their rentals in proportion to their customers ability to pay, or without cost to the indigent? The doctor's stock-in-trade is his knowledge, skill and time.

Thus is presented the results, to the public, of the establishment of socialized medicine, from the standpoint of the physician. It is not a defense to the threat of undermining his income, and can in no way be attacked on that premise. The medical profession is an integral part of the social economy, and anything which jeopardizes its position, will react unfavorably on the public welfare.

One of the greatest tributes of the medical profession to public health has been the development of preventive medicine in its study of the propagation of disease; and means of prevention. Volumes could be written upon this phase of its activities and it has been briefly stated elsewhere in this article.

Is it not just as much its duty to warn against this threat to the public welfare? Will not the gradual encroachment, ending in the final establishment of such panelized socialistic system of dealing out medical service, by means of a commercialized yardstick, be more destructive in its finality than the epidemics of the past, which have decimated the human race?

As stated before, is it not the entering wedge of a system which will engulf all human endeavors, stripping them entirely of the personal element so precious in the relationship of man to man, and regimenting the masses for the benefit of a political minority? I say political because politics is bound to play the major role."

The Government's objection was sustained, defendant's offer refused, and an exception was allowed.

DR. PRENTISS WILLSON, a Witness for the Defendants.

Direct examination.

By Mr. John E. Laskey:

I am a physician. I am 59. I graduated in 1905. After graduation I engaged in the general practice of medicine in the District of Columbia. I graduated from Georgetown University. I was in the service in the Army during the last war, and in 1919 when I left the service I specialized in obstetrics and gynecology and have done nothing but that since. I am attending surgeon or obstetrician in the Columbia Hospital for Women, which position I have held for ten or eleven years.

I am a member of the District Medical Society and the AMA. I joined the District Society in 1908 and became much interested in its affairs shortly after that time. I served in many different capacities in various offices in the Society: as corresponding secretary, as chairman of the Committee of Censors, several terms on the Executive Committee, some of them ex officio because of other committee chairmanships which I held at the time, some of them through election for a term of three years each; I was chairman of the Executive Committee several times, chairman for a term of the Committee on Medical Economics, and in 1933 I was elected president of the Society for the

fiscal year 1933-1934. The fiscal year of the Society runs from the first of July to the following June 30th. I was also a member of the board of the Health Security Administration and the Medical-Dental Service Bureau, which were eleemosynary institutions which the Medical Society had part in forming.

The Society meets regularly every Wednesday night. The first Wednesday night in each month is a business meeting, and of these meetings four, that is, the meetings in November, January, March, and May—are so-called stated meetings, at which certain formal business of the Society is transacted and at which, according to the constitution, amendments to the constitution must be brought in. Only at those stated meetings can amendments be proposed.

In the matter of changes to the constitution and by-laws, if a member wishes to attempt to have a constitutional change made or propose an amendment to the constitution, he must propose it at a certain stated meeting, and then that proposed amendment is referred to the Executive Committee, which is obliged to make a report concerning it to the next ensuing stated meeting of the Society, either recommending its adoption or recommending adversely to its adoption.

I think I can give you very accurately the history of the amendment to the constitution denominated Chapter 9, Article 4, Section 5. The purpose of the amendment was to afford the Society better facilities for controlling the practice of its members in relation to the Workmen's Compensation law, and it was first proposed before the Medical Society at the stated meeting in November, which would be the first meeting in November, 1935. At that time the provision in the constitution read:

(Mr. Laskey read to the jury as follows:)

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group, or individual engaged in the practice of medicine unless the Society has received proof that the profits from the practice inure to the benefit of members of the Medical Society."

The amendment now reads as follows:

(Mr. Laskey read to the jury as follows:)

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group, or

individual, by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within ten miles thereof, which has not been approved by the Society. The Executive Committee is authorized and directed to prepare an approved list of organizations, groups, and individuals, by whatever name called and however organized, engaged in the practice of medicine within the District of Columbia or within ten miles thereof, and the same shall be kept in the office of the secretary-treasurer. Before any such organization, group, or individual can be placed on the approved list of the Society, such organization, group, or individual, or the member of the Society proposing professional relations therewith shall submit to the Compensation, Contract and Industrial Medicine Committee such evidence as the Committee or the Society may require concerning the character, activities, financial condition and ethical standards of said organization, group, or individual, and after considering the same said committee shall make a report of the investigation and findings to the Executive Committee for such action as it may deem necessary."

In its original form the amendment was proposed on the first Wednesday in November, 1935. It was then referred to the Executive Committee for report at the next stated meeting, in January. At that time I was a member of the Executive Committee to which this proposed amendment was referred. The amendment was given consideration in the Executive Committee and was vigorously opposed, so far as its adoption in the constitution was concerned, by a group of that committee, of which I was one, and the Executive Committee reported it to the Society at the stated meeting on the first Wednesday in January, 1936, adversely.

Despite the adverse recommendation of the Executive Committee the Society adopted it, so that it became a part of the constitution in January, 1936, for the first time. Its proponents then realized that there was not proper machinery in the constitution to effect the purposes of the amendment, and at the stated meeting of the Society in March, 1936, two months later, another amendment was proposed for the purpose of putting into the amendment machinery to make effective the provisions of the amendment already adopted. At the stated meeting in March an ex-president of the Society, Dr. A. B. Bennett, proposed a

further amendment to the constitution, to strike out Chapter 9, Article 4, Section 5, and these two proposed amendments to the constitution were referred to the Executive Committee.

The Executive Committee met, and I still being a member of it, and the two amendments were referred to a subcommittee of three to prepare a report for the consideration of the Executive Committee to submit to the Society. That committee was composed of Dr. Bennett, Dr. Don Johnson, and myself. The subcommittee met and gave careful consideration to the two amendments, the one striking out and the enabling amendment to provide machinery to make the existing amendment operative, and prepared a formal statement of its reasons for the position it recommended to the Executive Committee, that the amendment to strike out Chapter 9, Article 4, Section 5, be adopted, and that the proposed amendment to provide machinery to make the present amendment operative be not adopted.

The report of the subcommittee was adopted by the Executive Committee, with a further amendment which was offered in the full committee, to the effect that the whole matter be referred to a special committee of the Society for study during the coming summer. That special committee was to consist of the president, the chairman of the Executive Committee, the chairman of the Compensation, Contract and Industrial Medicine Committee, the counsellor of the Society, Colonel Frederick A. Fenning, and two attorneys who were practicing at the local bar.

Following the usual constitutional procedure, this recommendation of the Executive Committee was brought into a full meeting of the Society in the latter part of May, 1936, as the stated meeting was postponed because the Society was having an annual scientific session. The Society overruled the recommendation of the Executive Committee and refused to strike out Chapter 9, Article 4, Section 5, and adopted the new proposed amendment which was to provide machinery for its operation, and then adopted the suggestion of the Executive Committee that the whole matter be referred to a committee for study during the summer, for a report to the Society in the fall.

After the July, 1936, change of office the committee was organized, consisting of Dr. William Sprigg, ex officio, as president of the Society, Dr. J. Lawn Thompson, ex officio, as chairman of the Executive Committee, Dr. R. Arthur

Hooe, ex officio, as chairman of the C. C. and I. M. Committee, Colonel Frederick A. Fenning as counsellor of the Society, and, under the provision of the action of the Society, Winship Wheatley and John Spaulding Flannery of the local bar. This was in 1936.

The subject of study for the committee was the relations of the Society to its members engaged in contract practice under the Workmen's Compensation law, and the best method of controlling that practice to make it conform to the ethics of the local organization and the AMA. The committee studied the matter during the summer.

Because of a serious difference of opinion in the Society and in the Executive Committee surrounding this matter, I resigned from the Executive Committee and from every other position and office I held with the Society at the meeting of April 22, 1936, although my resignation did not take effect until the first of the following May. I attended one meeting of the Executive Committee after that resignation. Therefore, I had nothing to do with the deliberations of this committee or with its activities or with the activities of the Executive Committee.

The Committee gave the matter consideration during the summer, and at a meeting of the Society in October, 1936, merely made a progress report and asked for more time to give the matter further consideration. The request was granted by the Society, and in November 1936 the committee made its final report to the Society, in which it suggested certain minor modifications in Chapter 9, Article 4, Section 5, which then had been in the constitution since the preceding January. The report of the committee was received and given the status of the first reading of a proposed amendment, because it did make certain minor changes in wording. At a stated meeting in January 1937 the matter then came up, with some further modifications in the wording of the amendment, and the action of the Society was to return it to the committee, with instructions to consult legal counsel further. The matter finally came up before the Medical Society at the first stated meeting in March, 1937, and it was then adopted.

Except for the changes made in March, 1937, the provision had been in the constitution for 14 months, and the amendment, so far as I know, has never been touched since then. I was opposed to the original amendment. I fought it in the Executive Committee. I signed every adverse report

concerning it, and I was in favor of its being stricken out of the constitution. On three different occasions I proposed amendments to strike it out of the constitution, and I voted for approval of them, and I continued to oppose the amendment until its final adoption in 1937.

I first heard of Group Health on the occasion of the meeting in Dr. William Gerry Morgan's office, May 16, 1937. The introduction of the amendment and the final passage of it in its present form, of Chapter 9, Article 4, Section 5, obviously did not have anything to do with Group Health because it was in the constitution 14 months before March, 1937, and I never heard of Group Health until May, 1937, so it was in the constitution 18 months before I ever heard of Group Health.

I recall the letter introduced by Dr. Sprigg to be sent to the hospitals in the fall of 1937 very well. Dr. Sprigg proposed sending that letter at a meeting of the Society in October, 1937, but Dr. Groover pointed out that it was too important a matter for the Society to take action on prior to all the members of the Society having been notified that the matter was coming up, and this placed the letter which Dr. Sprigg proposed sending to the various local hospitals as a matter on the agenda and definitely postponed it for consideration until the stated meeting on the first Wednesday in November following. I attended that meeting, which occurred on November 3, 1937.

The letter that Dr. Sprigg proposed sending the hospitals was read as follows:

"The Medical Society of the District of Columbia desires to call attention to Chapter 9, Article 4, Section 5 of the constitution, as follows"—

Then follows in the letter the same Section 5 which Mr. Laskey just read to the jury. Then follows this (reading further):

"Whereas the Medical Society is using its earnest efforts to give to the people of the District of Columbia the most advanced and best possible medical care, we therefore ask your cooperation by aiding us to carry out this principle. In view of the above section of the constitution of the Medical Society of the District of Columbia we hope your board will see the advisability of making such reservations in your hospital so that it may be in accord with and support our efforts.

"Members shall not accept appointment to or continue to serve upon the medical staff of any hospital or dispensary which is not approved by the Society. A list of approved hospitals and dispensaries shall be available in the Society's office."

The Sprigg letter was on the agenda for action at the November 3 meeting; on the afternoon of November 3 I noticed the letter on the agenda, proposing to call to the attention of the boards of directors of the hospitals the provisions of Chapter 9, Article 4, Section 5, which I was opposed to. I then tried to think of a possible way to prevent the sending of the letter, and on a piece of scratch paper with a pencil, without consulting with anybody in the world, and on the spur of the moment, I scratched down the resolution which I proposed that night, and which shows on its face how very crudely and carelessly it was drawn. I may have shown the draft to Dr. Hough, but I honestly don't remember doing that. I then had my secretary type the resolution. I then walked over to Dr. Christie's office, as I knew he was opposed to the sending of the Sprigg letter, and on seeing him in his office he said he was opposed to it. I then called his attention to the resolution I had drafted and asked him if he was willing to second it and if he thought that the resolution as drawn might prevent the sending of the Sprigg letter. He said he thought it might and he would be willing to second it. At the meeting of the Medical Society that night (November 3) there was a further recommendation, among much other business, brought in from the Executive Committee, which seemed to me to be proposing action along the same line as the Sprigg letter, and I asked if such proposal was in lieu of the Sprigg letter, but the question was not answered, so I immediately proposed my resolution. Prior to proposing my resolution, however, a resolution was introduced by Dr. Stanton, but it had nothing to do with this particular matter. The resolution I proposed read as follows:

"Whereas, the Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc., if it can prevent patients and physicians in its employ from being received in the local private hospitals;

Whereas, the Medical Society of the District of Columbia has no direct control over the policies of such hospitals as

are determined by their lay boards of directors, except through control of its own members serving on their medical staffs; and

Whereas, conflicts between the Medical Society of the District of Columbia and any local hospital arising from an attempt to enforce the provisions of Chapter 9, Article 4, Section 5 of the constitution should be assiduously avoided if possible because of the unfavorable publicity which would accrue to its own members;

Therefore, be it resolved, that the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the society at the earliest practicable date its recommendations as to the best way of bringing this question to the attention of the medical boards of directors of the various local hospitals in such manner as to obtain the maximum amount of practical accomplishment with the minimum amount of friction and conflict."

I had one purpose solely in introducing that resolution, and that was to prevent, if possible, the sending of Dr. Sprigg's letter to the boards of directors of the hospitals. There was considerable discussion of the resolution, and I had deliberately chosen the wording spontaneously, on the spur of the moment, because of the wide divergence of view within the Society as to this whole situation. My own personal feeling was that this method of approach to the hospitals in connection with Group Health was inexpedient and calculated to engender friction rather than be of any real assistance in the problem, and the wording of the resolution was deliberately employed, as far as its "Whereas's" were concerned, for the sole purpose of getting enough votes to send it through the Society. The necessity for some such parliamentary tactics is shown by the fact that the vote was quite close, 68 to 53 in favor of the resolution. The sole provision of the resolution which I wished to get over was merely to get the thing into a committee, with the thought in my mind that was the way possibly to choke the thing off and prevent it from being sent to the hospitals. It had that effect to this extent, that the Hospital Committee took the resolution under advisement in conformity with the action of the Society, and at a meeting on November 11 reported to the Society. Whereupon there was considerable discussion and it was re-referred to the committee, with instruc-

tions to consider it further. At the next business meeting of the Society, on December 1, the committee finally reported to the effect that the medical boards of the hospitals should call to the attention of the boards of directors the Mundt Resolution, and the report of the Hospital Committee on December 1 was adopted, which read as follows:

"That as a matter of educational policy the Medical Society of the District of Columbia strongly recommends that all hospitals engaged in the teaching and training of residents, interns, and nurses, where possible, follow the recommendation of the American Medical Association regarding the constitution of their entire medical staffs, namely, that each appointee be a member of the Medical Society of the District of Columbia or a local Medical Society in this immediate neighborhood and a member of the American Medical Association."

There was no further action concerning my resolution that I recall, and the only other action with which I had any personal connection was the final action of the Hospital Committee insofar as it concerned my connection with Columbia Hospital.

I recall a local physician named Scandifio, and that his name came before the Executive Committee concerning certain charges that had been made, but I had nothing to do with those charges as I had resigned from the Executive Committee and just retained my membership. I knew that he had been tried by the Executive Committee and it had been recommended that he be expelled, and that the matter came up at a Society meeting. Dr. Scandifio was charged with having violated Chapter IX, Article IV, Section 5, and also two or three other violations of the provisions of the constitution, which charged in substance a violation of the Medical Ethics of the AMA, and that he had contracted to give his services under circumstances wherein he could not render good medical service; further there was a requirement that a physician file his contract with the Society, and Dr. Scandifio had failed to do this, as required by the constitution. I voted for his expulsion reluctantly, because I felt it was incumbent on the Society to protect itself, and as its members had voluntarily agreed and obligated themselves to obey the provisions of the constitution—while I didn't like certain provisions—he had violated several provisions of that constitution, as far as I could de-

termine from the report of the committee. While I didn't know Dr. Scandiffio very well he was a pupil of mine at Georgetown and had been, as far as my knowledge went, well trained and was personally associated with a very intimate friend of mine, a leading pediatrician, and at the time this whole business was boiling in the Medical Society I had from the very beginning many patients in private practice who were members of Group Health. On several occasions during that period patients of mine stated that they would like to have Dr. Scandiffio see their babies, and I told them as far as I was concerned he was competent and I had no objection to him seeing their babies if he wished and, as a matter of fact, he did see the babies of several patients of mine. That was the close of my contact with the Scandiffio incident. In 1937 and 1938 I was one of eight attending surgeons of Columbia Hospital, four of whom had a surgical service and four of whom were attending obstetricians; I was one of the latter and a member of the medical board of the hospital. Columbia Hospital also had a courtesy staff classified into three categories. Class I concerns operative procedure in gynecology and includes everything connected with surgery on the organs peculiar to women; Class II concerns major obstetrics, involving such things as craniotomy, for instance, or the destruction of an unborn baby, the removal of a uterus; in other words, anything pertaining to the care of a woman in labor. Class III concerns the handling of women in labor as long as it is progressing normally and satisfactorily, but if complications arise a person holding privileges in this class was required to have consultation with a member of the staff of the hospital, free of charge to the patient if the patient was unable to pay for it.

I recall that Dr. Selders applied for courtesy staff privileges at Columbia Hospital; seeking privileges in general surgery, major gynecology, major obstetrics, and normal obstetrics; in other words, he applied for privileges in Classes I, II, and III, and, in addition, tacked on his application the request to do general surgery in the hospital, which meant that he could take out a brain tumor or do a thyroid, or operate for an empyema in the chest, do any surgery. Columbia Hospital doesn't have on its staff any physician corresponding to that sort, and issues no privileges in general surgery. While there are general surgeons who can practice at Columbia, they are on the consulting staff. In other words, we have a consulting staff of general

surgeons, and in the event the patient for whom the hospital is responsible in a ward develops, for instance, empyema from pneumonia following childbirth, we would call in a consultant, because we wouldn't know about such a condition, it not being in our line. Dr. Selders applied for the whole works, I, II, and III, everything, and as far as I know there is no such person existing in the United States. The board, however, gave consideration to the application. As an obstetrician and gynecologist I wouldn't set myself up as competent to determine the ability of a man to do general surgery, as I don't know enough to even gauge his ability from the credentials he might present, and if he referred to a clinic, with the exception of the Mayo Clinic, I probably wouldn't even know enough about the standing of the clinic to which he referred to intelligently pass on the matter, so the application as regards general surgery, despite the fact that we didn't have any such individual on our staff, was referred to the Washington Academy of Surgery for guidance as to what his qualifications were. The question of his ability to do major gynecology, that, modestly, I think I have some ability to gauge. However, that phase of the application was referred to the Washington Gynecological Society for an advisory report, in the same way as we had referred the other application to the Washington Academy of Surgery, as it was our custom to do that even though we felt competent to examine the credentials ourselves. The Washington Academy of Surgery advised adversely as to Dr. Selders' qualifications in general surgery; the Washington Gynecological Society advised adversely as to his qualifications to do major obstetrics and gynecology, which was in accordance with the opinion of the medical board, and since he had applied for all three groups, the medical board, which acts only in an advisory capacity to the Board of Directors, advised the Board of Directors against granting the privileges applied for, and that, I recall, was the action of the board.

Later an application was received from Group Health, rather than Dr. Selders, renewing in a way Dr. Selders' application. This was on September 2, 1938. My impression was that the correspondence on the renewal was handled by some official of Group Health, and the gist of it was that Group Health desired his application should be treated separately for each group of privileges sought. A motion was made before the medical board that Dr. Selders' ap-

plication for privileges I and III, involving major gynecology and minor obstetrics—that is, normal obstetrics, leaving out major obstetrics—be considered. The motion was considered and the medical board recommended adversely; thereupon I moved that the Board of Directors be advised that the medical staff didn't think it advisable to act on the application at that time, and, by a divided vote, that recommendation prevailed and was sent to the directors. The Board of Directors acceded to it and the result was that Dr. Selders was permitted privileges pending final disposition of it, pending which period he was permitted to handle normal obstetrics in the hospital. My position in the matter was this: I said to the medical board that there wasn't any question in my mind that the man is not competent to do general surgery; but that matter is out, and I am equally convinced that he has not shown any evidence that he should be granted the privilege of doing major gynecology or handling desperate cases of childbirth, but were he a member of the Medical Society you would grant him privileges or at least recommend him for privileges in Class III, normal obstetrics, and, in my judgment, this situation should be handled in the same way. Men on Group Health should not be permitted to practice in any hospital if they cannot show that they possess the necessary qualifications, the same as other men in or out of the Society are required to demonstrate. At the very time Dr. Selders' application was before the hospital we turned down a much more competently trained man who was a member of the District Society, and the Board of Directors sent the application back to us under pressure from Members of Congress and various high officials. The medical board stuck to its guns and refused to alter its position, and that concerned a member in good standing in the Medical Society here. My opinion was that if a doctor was qualified, the fact that he was on the staff of Group Health should make no difference, and the board should take a position comparable to the one that Dr. Macatee took at Garfield; that is, such doctor should either be permitted to practice pending the outcome of the question of the legality of Group Health or should be kept out of the hospital altogether. The claim of the members of Group Health concerning illnesses treated in hospitals by a Group Health physician is an outstanding example of the way Group Health—and I am referring to the crowd that had

the thing in control, was going to ride roughshod over the situation in Washington in connection with the hospitals—because there isn't a member of this jury, who if taken ill tonight, could call up a hospital and get in there and be treated by a physician of his choice unless that physician is admitted to courtesy staff privileges in that hospital, but the GHA organization took the position that because an individual was a member of GHA they were different and were entitled to have a privilege for themselves denied to every other citizen in the District of Columbia. The privilege they sought was the right of calling a hospital and saying: "Dr. Blank is my physician and I want to get in there, and he is going to take a tumor out tomorrow," and the hospital should have nothing to say as to whether the doctor was competent to do it or whether the patient was committing hara-kiri. Dr. Selders did attend normal obstetrical cases in the hospital after September of 1938.

I didn't engage in any combination or conspiracy with any person, organization, or society to restrain trade in the District of Columbia in violation of the Sherman Act, as I never contacted anybody in the AMA in this matter in the period covered by the indictment, on that subject or any other, and I have only discussed the matter casually with one or two of my co-defendants, but did nothing more, and I was out of office in the Society, off all responsible committees and any conversation which I had with any of my co-defendants was by way of disagreement. I don't know whether I can name all of the co-defendants in the case, but I would recognize them, as I know them all. I never conspired with anyone for the purpose of restraining Group Health; the members of Group Health, the doctors serving on the medical staff of Group Health, doctors not on the staff of Group Health, or for the purpose of restraining the business of the Washington hospitals.

On receipt of a communication from the secretary of the District Medical Society calling attention to the Mundt Resolution, Dr. Crowley, a member of our staff, moved that the medical board recommend to the Board of Directors that it adopt the policy of the Mundt Resolution. The Board of Directors received the recommendation, returned it to the medical board with the request that the board rescind the recommendation, and the board, on my motion, rescinded its action.

Cross-examination.

By Mr. Lewin:

The final thing I remember on the Mundt Resolution is that I moved that the action of the medical board in recommending its adoption to the Board of Directors be rescinded, as I was not for it, and stated that the effect of it would be to take in people who could pay their medical society dues and keep out those who could not. So far as I know the application of Dr. Selders followed the usual form and gave information as to his birth, education, experience, teaching experience, hospital experience, and his references. In investigating an applicant one of the sources we turn to is his references.

Government counsel read Gov. Ex. 538.

On November 25, 1937, I was a member of the Medical Board at Columbia Hospital, and I have no recollection of giving any instructions to Colonel Ashburn to write that sort of letter (Gov. Ex. 538). As Government counsel read Gov. Ex. 538, I heard nothing that wouldn't be true, and it is under Colonel Ashburn's signature. I have no recollection of having seen Gov. Ex. 539 before.

Q. I want to know whether the letter (Gov. Ex. 539) refreshes your recollection that these facts were before the Medical Board some time before you voted against Dr. Selders.

A. I couldn't say. It doesn't refresh my recollection as to whether this specific letter or these specific facts were before the Board the result of this letter, but I know that such facts were before the Medical Board. Whether they came from this particular source or not, I could not say.

Q. Were these facts before the Board: that Dr. Selders had served a residency in the Worcester City Hospital in surgery between the dates July 1st, 1936, and July 1st, 1937, coming to that institution from the Pennsylvania Postgraduate School, where he had taken a course in surgery the previous year?

That as to the number of operations he performed, the only accurate figures would have to be gained from a survey of a large number of records, but scanning the operating schedules for the year he was listed at the Worcester Hospital to operate on 273 cases, of which a hundred and ninety might be classed as major and 83 as minor. That

these figures did not necessarily mean that he had performed these operations himself.

"He may have elected to assist someone else in the operation, or does it mean that this is all the operating that he participated in. He may have assisted or otherwise participated in considerably more than are shown here."

Doesn't it also give you these facts:

"Dr. Selders was a resident on the surgical service here and, therefore, did not figure to any particular extent in obstetrical work. Gynecology is here absorbed in general surgery and one may assume that he had considerable contact therefore with gynecological surgery."

Those facts, you say, were before the Board as to his experience in the Worcester City Hospital at the time they denied his application?

A. I assume that similar facts were before the Board, but I have no recollection of these specific facts. I could comment on them if you want me to, but it would not be a question of recollection.

The application for surgical privileges was referred to the Washington Academy of Surgery, which turned his application down without disclosing the ground (Gov. Ex. 447-A). The application was referred to the Washington Gynecological Society as to obstetrics and Gynecology, as that was the usual routine. I don't remember when the custom started of referring applications for gynecological privileges to the Washington Gynecological Society. When the Gynecological Society recommended adversely to Dr. Selders I have no recollection of their having stated any grounds for the recommendation. I didn't interview Dr. Selders myself and had no occasion to observe his technique. In voting against Dr. Selders' application I had before me the adverse recommendations, without grounds, of the Washington Gynecological Society and the Washington Academy of Surgery, and as Dr. Selders had applied in the four categories—general surgery, major obstetrics, gynecology, and normal obstetrics—so far as I was concerned, I didn't require the reference to the Gynecological Society concerning his qualifications in obstetrics and major gynecology, as I could gauge that myself. I could gauge it on the letter you (Government counsel) showed me and

his qualifications in gynecology were worse, as it showed training in a hospital where gynecology was absorbed in general surgery, and there is no worse training than that for gynecology. His qualifications merely showed him to be in a general surgical service, and that his gynecological experience would certainly not be considerable from the point of view of putting a man in a position of turning him loose in a hospital in gynecology. His experience wouldn't show him competent to do that at all.

Q. You remember it did give you this information: this is for the superintendent of the hospital,

"One may assume that he had considerable contact, therefore, with gynecological surgery?"

A. I testified that wouldn't mean a thing to me, because, as stated in the letter, that was all absorbed in general surgery.

I think we made a very good investigation of the applicant and it was entirely sufficient for the purpose of passing on the candidate under the circumstances disclosed in his application and this letter. Columbia is a special hospital having a wonderful record throughout the country in obstetrics and gynecology. It is taking no chances of putting a man of uncertain ability on its staff. The hospital did give him privileges in normal obstetrics, thereby indirectly giving him courtesy privileges and he did bring patients in the hospital, as while he was formally placed on the courtesy staff he did have the privilege of bringing normal cases in the hospital. I remember that his request for privileges at some time was broken down into different classes which finally resulted in his being given privileges of attending cases in Class III.

The Washington Gynecological Society is made up of the leading specialists in gynecology in Washington; it has a requirement for membership that a member must be a member of the District Medical Society. Dr. Crowley, president of the medical board of Columbia, was active in the Washington Gynecological Society.

I have a hazy recollection of some young man from Group Health late in 1938 applying for privileges, but I have no recollection as to who it was.

Q. Let me go back to the minutes of the medical board of April 14, 1938. Does not that refresh your recollection

that the application of Dr. A. S. Hulburt for privileges in Class III was tabled?

A. No; I have no recollection of it at all. The minutes may show whether I was present at that meeting. There were a whole lot of meetings that year particularly that I never attended, and I may not have been there; so I have no recollection of it at all.

Q. Did you know that he resigned from Group Health Association on April 25?

A. I may have known it at the time, but I have no recollection of it.

Q. Did you know that he was given Class III privileges at your institution in early June, 1938?

A. I have no recollection of that, Mr. Lewin. You see, this whole thing was minor, as far as I am concerned.

Q. Perhaps it was, but I am trying to get the facts.

A. That is all right. I am merely trying to excuse myself for not remembering well.

Q. Will you look at my notes on the minutes of the meeting of the Medical Board on June 9, 1938? Dr. A. S. Hulburt's application was approved for Class III on that date, was it not?

A. What are you asking me?

Q. Whether that refreshes your recollection that after April 25, to wit, in June of 1938, he was approved for Class III in your institution.

A. I am terribly sorry. All it does is to bring back a hazy recollection to me of having heard that name before the Medical Board.

Q. Is not your hazy recollection this, that Dr. Hulburt applied when he was a member of Group Health Association and was not given privileges, and his application was tabled until after he resigned from Group Health Association, and then a little over a month afterwards he was given privileges there? Is not that your recollection?

A. It is awfully hard for me to separate in my mind what I remember and what I know now; but it begins to clear up in my mind a little; yes.

Q. Would you say that my question is correct?

A. I have no doubt it is correct. In fact, if you ask me if it is so, I would say yes, undoubtedly, because the record seems to show it.

Q. Would you testify that his connection with Group Health Association had something to do with postponing it until after he had resigned?

A. I have no recollection of that.

Q. Dr. Halstead, another Group Health Association doctor, testified that he applied at your hospital. Do you recall that?

A. I do not even have any recollection of there ever having been a Dr. Halstead connected with the GHA or having applied.

Q. Were you not present at the meeting of the Medical Board on December 9, 1938? My notes show that you were.

A. Maybe I was, but I have no recollection of it.

Q. December 9, 1938. Do not these notes refresh your recollection to this extent, that on that day the application of Dr. Clark D. Halstead for Class III privileges was postponed pending further information?

A. I have no recollection whatsoever.

Q. You have none?

A. None at all.

Q. Would you say that you attended that meeting?

A. If the minutes say so. I have no recollection of it at all. I do not know any more about where I was on December 9 than you do, I guess.

Q. I suppose you would not question that that was the treatment that was given his application?

A. No.

Q. Would you say that his connection with Group Health Association had something to do with deferring action from August, when he applied, to December, 1938, and then deferring it further at that meeting?

A. What was he applying for?

Q. Class III privileges, normal obstetrics—isn't it?

A. That is normal obstetrics. And you are asking me what?

Q. Whether, in your opinion, his connection with Group Health Association accounted for the fact that although he applied in August his application was deferred until December 9, 1938.

A. I cannot answer that positively. There were other factors coming in at that time. Everybody who was applying there at the same time was postponed because the hospital staff was so full that we could not take care of patients. Whether that action was in connection with this or not

I don't know. I have no recollection of any discussion about the GHA in connection with Dr. Halstead, or anything about it. I don't even recollect that there was such a man.

Dr. Sylvester, who is on the staff at Columbia, is a member of the Gynecological and Medical Societies. Drs. Pagan, Kotz and Stan n were not members of our attending staff but were members of the courtesy staff. Dr. McNitt, a member of our attending staff, was secretary of the Gynecological Society. At the meeting of the medical board of November, 1938, Dr. Sprigg's motion to reconsider Dr. Selders' application for privileges in Classes I and III and that he be not endorsed was not passed, but my substitute resolution that it be considered inadvisable to act at the time of his application was carried with the net result that Dr. Selders, instead of being denied privileges in Class III, practically got privileges in Class III during the pendency of his application.

Q. Thank you, Doctor. I have just a few more questions about other phases of your testimony. I understood you to say on your direct examination that when you first learned of Group Health Association on May 16, 1937, it was at Dr. Morgan's office; and with reference to section 5—and I am going to call it Section 5 for brevity, and not go through the rest of it. That is the only Section 5 involved, is it not?

A. Yes. Thank you very much.

Q. Section 5 of the constitution had been in force for 14 months?

A. It had been in force a year before the preceding January. That was in 1937, was it not?

Q. Yes.

A. Yes, sir.

Q. Did you not mean by that testimony that it had been in force as Section 5, but in a radically different form and substance?

A. No; I did not. I testified that it had been modified.

Q. You testified it had been modified only in some minor particulars.

A. It seemed to me to be minor.

Q. Is not this the way it read when it was adopted January 8, 1936 (reading):

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group,

or individual engaged in the practice of medicine unless the Society has received proof that the profits from such practice inure to the benefit of the medical profession only."

A. I assume it was. I know it was a different form.

Q. Did it not remain in exactly that form until March 3, 1937, for a period of fourteen months?

A. That is my recollection, precisely.

Q. When you learned about Group Health and when you discussed it, did you not understand it to be a non-profit organization??

A. I think so; definitely; yes.

Q. Is it not true that when you amended it, it read as follows—

The Court: When was the amendment

Mr. Lewin: March 3, 1937, some 14 months later.

Mr. Burke: There was an amendment on January 6, 1937, also.

The Court: We are speaking about this one.

By Mr. Lewin:

Q. As a matter of fact, it was not amended on January 6, 1937, was it?

A. My impression is the same as yours, that it came up for action, and then I think it was referred back because they wanted to put some more words in it, and it went back to the Executive Committee again. That is my recollection.

Q. On March 3, 1937, it was amended to read as follows, was it not:

"No member of the Society shall engage in any professional capacity whatsoever with any organization, group, or individual by whatever name called or however organized, engaged in the practice of medicine within the District of Columbia or within ten miles thereof, which has not been approved by the Society."

I will not read the rest, because that is with reference to the machinery. But is not that the way it read when you amended it?

A. I assume it did. I never carried it in my mind.

Q. Dr. Willson, I have only a few more questions.

I was questioning you when we adjourned with regard to the amended Section 5. Now, isn't it true that on March

3. 1937, that section became substantially changed from what it had been before?

A. Well, Mr. Lewin, that was never my understanding of the matter. The section was introduced originally, and was so understood in the Medical Society always, as a method for controlling the practice of members and the relations of the Society to members who were engaged in contact practice under the Workmens Compensation Law.

Q. But by its terms it was not limited to Workmens Compensation clinics, was it?

A. Oh, no, but I mean that was what lay back of it ever having been introduced.

Now, to continue to answer your question, I personally never had the feeling—I don't recall the wording of the thing in either form in my mind—but I never had the feeling that it was substantially changed.

Q. Before March 3, 1937, it applied only to organizations where profit accrued to laymen, whereas after that date it applied to all persons practicing medicine and to all organizations practicing medicine whom the Society did not approve of for any reason it chose; is that right?

A. May I compare them? Will you show me where the two are?

Q. Yes, sir. I now show you a copy of the section as adopted January 8, 1936.

A. This is Section 5?

Q. Section 5, yes.

A. Now, let us take the other one.

Q. This is the way it was changed on March 3, 1937.

A. I would say that the wording of the provision adopted in lieu of the original in March, 1937, was somewhat more inclusive than the original.

Q. So that we will be clear about it, isn't this true: that before the change it simply limited your members from having participation in clinics where profit from those clinics went to laymen, whereas after the change it forbade members from having any participation whatsoever with any persons practicing medicine if those persons were not approved by the Society for any reason?

Mr. Richardson. We object to the question on the ground that it calls for a conclusion of the witness and is purely argumentative; further, the documents speak for themselves.

Mr. Lewin. I am simply asking for the understanding of the witness.

The Court. I think that is strictly true, Mr. Richardson; however, the doctor has stated his understanding to be that there was no substantial change, and it may be that this cross-examination is reasonable.

By Mr. Lewin:

Q. Will you answer the question?

A. Then, you will have to repeat it.

Q. Isn't it true that before the change it forbade your members from having anything to do merely with clinics that had a profit, where some of that profit went to laymen, whereas after the change it forbade your members from having anything to do with any persons practicing medicine unless they were approved by the Medical Society, for any reasons the Medical Society saw fit?

A. Well, I testified, and I think as I read this now, that this latter provision seems to me to be more inclusive, from the point of view of its wording; but from the point of view of my understanding of the practical application of the thing, I never had any opinion that there was any difference.

Q. But I want to be clear about this, and I should like to have a direct answer, if you can make it, to my question.

A. I think I stated that: that I thought that more inclusive. The language here was more inclusive.

Q. Didn't you understand that its application would apply to the Group Health Association?

A. No, never in the world, because I had had no knowledge of Group Health Association for two months later or more.

Q. As a matter of fact, didn't you invoke this other section with regard to Group Health Association?

A. I never did.

Q. Didn't you? Well, let's see. You testified that you presented this resolution, did you not?

A. Yes.

Q. At the November 3 meeting of the Society?

A. That is right.

Q. That was directed to Group Health Association, wasn't it?

A. No, sir.

Q. What?

A. No, sir.

Q. It was not?

A. No, sir.

Q. Was it directed to Group Health Association doctors?

A. No, sir.

Q. What did you mean by this language:

"Whereas, The Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc., if it can prevent patients of physicians in its employ being received in the local private hospitals"?

A. I meant just what it says: that it has an apparent means.

Q. Wasn't your resolution addressed to the Group Health situation?

A. Never had, really—Except indirectly, it had no connection with the Group Health situation whatsoever.

Q. What was the purpose of reciting at the very start that you had "an apparent means of hindering" its operation?

A. As I explained in my direct testimony, the reason for bringing in that resolution, except the "Resolved" down here (indicating), was that the thing be referred to a committee, which would present a resolution at the Medical Society, which would prevent the sending of that letter to the boards of directors of the hospitals, and to obtain enough votes, as an old medical organization man, familiar with what had to be done to get things in the Society—to get enough votes to get it passed and get that letter—proposed letter—stopped. There was the whole thing with reference to that resolution, and nothing else but that.

Q. All right. Now, do I understand that you knew you could not get enough votes for your resolution unless you made it appear that it was directed against Group Health Association?

A. I didn't know anything of the sort. How could I know how many votes I would get? All I knew was that there was a great deal of difference of opinion and a great deal of turmoil in the Society, and any number of different views on the subject.

What I wanted to do was to present a resolution which would attract enough votes to stop the sending of that letter and bury the whole thing in the committee.

Q. Wasn't this turmoil in the Society, turmoil with regard to the Society's attitude toward Group Health?

A. It was the clashing views of many different individuals and convictions as to the threat involved in GHA. Some thought it was no threat at all; some thought it was a great threat. Some wanted to attack the problem one way, and some another.

I felt it was making a mistake, as far as the Society was concerned, and my resolution was certainly not to protect GHA, neither was it to attack it. It was to protect the Society against a course of action which, in my judgment, could not be sustained and would only, if it were put through, make the Society ridiculous.

Q. You mean a course of action with regard to Group Health Association?

A. I mean a course of action with regard to calling the attention of the lay boards of hospitals to the provision of the constitution, which, as I have testified, I was always opposed to. I was opposed to this thing ever getting into the constitution. I tried to get it out, and for months and months after any of the GHA situation developed, I was persistently and consistently opposed to the application of that provision of the constitution to the GHA.

Q. You knew that the Sprigg letter, which you opposed, was directed to Group Health Association, did you not?

A. It was directed to the lay boards of the hospitals, but I know what you mean: it was motivated by the GHA situation.

Q. Yes, the purpose was to take care of the GHA situation?

A. I don't know what the purpose was in the mind of the proponents, but it was certainly, in my judgment, connected with the GHA situation; it couldn't be anything else.

Q. It couldn't be anything else?

A. I don't think so.

Q. You could not think of any other purpose for it?

Mr. Laskey. For what?

By Mr. Lewin:

Q. For the Sprigg letter?

A. At that particular time—Of course, it could have been applied to many other situations with respect to the hos-

pitals, but at that particular time the natural assumption was that it applied to the GHA.

Q. As a matter of fact, you don't know of any other situation to which it was applied?

A. Not at that particular time, no.

Q. You were offering this resolution as a substitute for the Sprigg letter, weren't you?

A. That is right.

Q. So, your resolution, too, then, was directed to taking care of the Group Health Association?

A. I have testified, Mr. Lewin, and you can't make me say that, because it isn't true. I testified that my sole purpose in this resolution was to stop the sending of that letter. The fact it was concerned with the GHA situation was purely coincidental.

Q. You believed what you stated here, didn't you, in recital No. 1?

A. Yes, I did—that it had the apparent means. Just underscore that word "apparent."

Q. You believed that on November 3, 1936, didn't you?

A. That they had the apparent means?

Q. Yes.

A. Yes.

Q. On November 3, when you had that belief, it preceded by five days or eight days Dr. Selders' application to your hospital; isn't that so?

A. I have no more idea of that relationship in time. I have no recollection of any such relationship.

Q. When you got Dr. Selders' application, you still thought, didn't you, that your Society had the apparent means of hindering Group Health Association, if you could prevent Dr. Selders from being in the hospitals?

A. Oh, I don't know, because this language you refer to in this first paragraph occurred to me about 20 minutes past 5, for the first time, on the afternoon I introduced it.

Q. But after you put it into the resolution, you still had that possibility in mind, didn't you, when you considered Dr. Selders' application?

A. Well, I am afraid—I am sorry I have lost—

Q. When you considered Dr. Selders' application, which I believe was sent to your hospital on November 11—

A. (Interposing) Yes.

Q. (Continuing) You had in mind this belief, didn't you, that the Medical Society had an apparent means of hinder-

ing Group Health Association if it could prevent any of the Group Health doctors from being received into the local hospitals?

A. I certainly did not, because I had advocated an entirely different—as far as my opinion was concerned, the matter of GHA physicians in hospitals should have been handled in an entirely different manner. I can tell you what I thought about it, if you want me to.

Q. I think you have told us a lot about it.

Didn't you also say that the Medical Society has some control over the policies of the hospitals? Didn't you say in substance that it had some control over the policies of hospitals by its control over the members serving on the staffs?

A. I said it has no direct control over the policies of hospitals as determined by their boards of directors except through its control of its own members serving on the medical staffs.

Q. So, you did believe it had that much control?

A. That is exactly what I did not believe, and that is the reason the resolution was introduced, to keep the Society from getting into a ridiculous position with the hospitals.

What would have been the result of sending this letter? Suppose the boards of directors said to the Medical Society, "You go and attend to your own business; we will attend to ours."

The situation had come up—exactly the same situation—before, when I was on the executive committee, and the Medical Society, as my recollection goes now, on the advice of the American Medical Association and the American College of Surgeons, had to back down.

Q. What do you mean by this:

"except through its control of its own members serving on their medical staffs"?

A. Mr. Lewin, I meant what it says. The only method of control—direct control—over the policies of hospitals which the Medical Society could possibly exert would be through the control of its members serving on those staffs.

Q. But you meant it did have that much control?

A. I just testified I didn't feel it had that much control, because I had seen the thing come up before, and the Medical Society had to back down, because it proved it didn't have it, for the reason that it was my opinion throughout

this whole controversy that if it ever came to a showdown between the Society and the members of the Society who were hospital staff physicians, they would stick with the hospital rather than with the Society.

Q. Then, why didn't you say it didn't have any control at all about anything, about any of the staffs?

A. Because it never would have gone through the Society in that form. In other words, the letter would have gone out, and the motion would have been lost.

Q. In other words, you mean to say you were not really sincere?

A. I was subtle; let us put it that way.

Q. Do I understand that it is your testimony that although you put those two recitals there in the resolution, you did not mean them? Is that what it comes down to?

A. Well, I wouldn't go that far, Mr. Lewin.

Q. Did you mean them, or didn't you mean them?

A. I said in the first one—the gist of the words—

“Whereas, the Medical Society of the District of Columbia has an apparent means of hindering the successful operation of Group Health Association, Inc.—”

Q. (Interposing) Did you mean that?

A. I meant just that, if you underscore the word “apparent.” It appeared on the surface that it had.

Q. It is not underscored, but let us assume it is underscored. Did you mean it as it is written if you underscore the word “apparent”?

A. Yes.

Q. Now, the second one. Did you mean that?

A. “Whereas, The Medical Society of the District of Columbia has no direct control over the policies of such hospitals as determined by their lay boards of directors, except through its control of its own members serving on their medical staffs; . . .”

That is a statement of fact. That is the only possible way they could control the hospital.

Q. Did you mean that?

A. I meant that—just as it reads.

Q. Now, then, did you mean this statement in the third recital:

“Whereas, Conflicts between the Medical Society of the District of Columbia and any local hospitals arising from

an attempt to enforce the provisions of Chapter IX, Article IV, Section 5, of its Constitution should be assiduously avoided, if possible, because of the unfavorable publicity that would accrue to its own members''?

A. Yes, I certainly did.

Q. Did you mean that that was the reason why you were offering the resolution: to avoid unfavorable publicity?

A. No; there were many other reasons, as I have testified; this was one of them.

Q. Did you give any other recitals in that recital?

A. I gave them in my testimony; I didn't give them in there.

But please remember this thing was done in 15 or 20 minutes on my desk late in the afternoon, and I am not proud of it as a literary effort.

Q. I am not questioning its literary merits. I am trying to see what was meant by it.

The reason you gave there, and the only reason, was that conflicts would bring unfavorable publicity?

A. Conflict should be avoided for any reason, because it would bring unfavorable publicity.

Q. That Section 5 was the same Section 5 amended March 3, 1937?

A. This is November, 1937, and therefore this refers to the final adoption in March; that is correct.

Q. So, here you have a resolution to take care of the Group Health situation, and the thing you refer to is Section 5; isn't that so?

A. It is not to take care of Group Health Association at all; it is to take care of an intramural situation within the Medical Society which had to do with Group Health. Beyond that I will not go, because it is not true.

Q. The resolving part of the resolution was referred to the Hospital Committee in the first instance?

A. That is right.

Q. Why did you refer it to the Hospital Committee?

A. That is the first one that came into my mind. There was no ulterior motive in that. It was a group of physicians each one of whom was on the staff of a hospital, and who were therefore familiar with the situations that develop between staffs and hospitals, and so forth, and it seemed to me that they were the very group of men in the Society who would probably succeed in smothering this

effort to send out this letter of which I disapproved so heartily.

Q. You did not refer it to the Hospital Committee to smother the letter, did you? You moved this resolution in lieu of the letter, and that killed the letter?

A. I moved it in lieu of the letter, because I didn't want the letter—If this motion prevailed, the letter does not go out.

Q. Precisely.

A. The letter I left in the hands of the Hospital Committee.

Q. No, the letter has gone.

A. Well, I mean the letter matter is left—Toward whatever the letter was aimed is left in the hands of the Hospital Committee; and not being an officer or member of a committee of the Society, my responsibility was completed there, as far as I was personally concerned. If they had never reported it out, it would have suited me ideally.

Q. You don't mean that you would refer it to the Hospital Committee for the Hospital Committee to deal with the letter, do you?

A. "... to all phases of this subject," and naturally the purport of the letter and all phases of this subject could not refer to anything but the letter, and that was the matter of approaching the lay boards of the hospitals.

Q. You knew that the Hospital Committee had one representative of the attending staff of each one of the hospitals, didn't you?

A. Oh, yes. Yes, I was thoroughly familiar with it.

Q. So, if you were going to bring pressure, as you say, or any control over your members serving on the staffs, that would be the logical committee, and that was why you picked it out?

A. That is not true.

Q. Do you mean to say you just picked out the Hospital Committee because it happened to be the first committee which came to mind?

A. I already explained that.

Q. Now, you wanted that Hospital Committee to make recommendations as to the best way of bringing this question to the attention of the Medical Boards. What did you mean by "this question"?

A. This question that was proposed in the letter. That was the reference to—What do you call it?

Q. Group Health Association?

A. No, the section. Section 5?

Q. Yes.

A. Yes.

Q. Doesn't "this question" mean the Group Health Association question?

A. No, to Section 5, I suppose. Let me read it:

"Resolved, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject"——

Now, this resolution was in lieu of the letter, and the subject was proper on the boards of various hospitals—"and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals in such a manner as to insure the maximum amount of practical accomplishment with the minimum amount of friction and conflict."

I can't say exactly as to what I had in mind. I can only say that if the Hospital Committee had brought in a report that the matter should be handled along the lines, for instance, I testified this morning that it had been at Garfield, about their letting them in upon determination——

Q. Letting whom in?

A. The staff physicians.

Q. Of whom?

A. GHA.

Q. Oh.

A. (Continuing) Either give them privileges in the hospital if qualified—now, please note that: if qualified—or keep them out.

Q. Do you say anything about it?

A. No, I don't say anything about it. You asked me what I had in mind. I am trying to tell you.

I say if the Hospital Committee had brought in a report and said, "We recommend that these men all be excluded pending determination of the legality of their practice; or if they be found qualified, they be admitted pending determination of the legality of their practice," that would have satisfied me a hundred per cent, because I thought it was the way the situation should be handled.

Q. When you say, "That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject," do you mean by this subject the Group Health Association controversy?

A. No, I meant the proposed approach to the hospitals.

Q. Wasn't the only proposed approach to the hospitals in connection with Group Health?

A. I have already stated that.

Q. The resolution reads:

"Resolved, That the Hospital Committee be, and is hereby, directed to give careful study and consideration to all phases of this subject and report back to the Society, at the earliest practicable date, its recommendations as to the best way of bringing this question to the attention of the medical boards and boards of directors of the various local hospitals,"

and there, by "this question," wasn't the question this approach to the hospitals in connection with Group Health?

A. In connection, first, with the Section 5 as it applied to Group Health, if you will say that.

Q. I am agreeable to that. As applied to Group Health Association?

A. I think so.

Q. As I have just stated, it was within a month that you got this Selders application?

A. I don't know when it was. I have no recollection of when it came at all.

Q. Didn't Dr. Smith speak there in favor of your resolution in this way: Didn't he say he felt that this information could be conveyed to them orally, when they would have nothing to fight back with? Do you remember that?

A. No, I have no recollection of it, but it is apparently in the minutes. I suppose he said something like that. I have no control over what he said.

Q. Do you remember Dr. Hooe, a defendant in this case, saying this:

" * * * he was of the opinion that Dr. Willson's substitute offered some sound points, one in particular that which suggests that this committee be composed of members of the hospital staffs. He thought it was inconceivable that the hospitals would not acquiesce to reasonable principles. Another objection he had to Dr. Willson's resolu-

tion was that the committee is delegated to take its time and report back to the Society."

Do you remember that discussion?

A. Only because I have read this over, and it has been recently refreshed in my mind. I have no control over what Dr. Hooe said.

Q. Didn't you yourself say this with regard to the Sprigg letter, when you were urging adoption of your substitute:

" * * * he felt that the letter carried a veiled threat to the effect that if the hospitals did not comply the Society would unstaff them."

A. I think if it is there I certainly said it.

Q. Did you continue and say that you hoped the Society could control its own members?

A. What did I say after that?

Q. Sometimes you had a little doubt.

A. I had a great deal of doubt. That is the reason I introduced the resolution.

Q. But you hoped for it?

A. I hoped the Society was important enough to its members so that they would stick with it rather than with anything else, but I doubted it and still do.

Q. Right after that didn't you hear Dr. John A. Reed say that he was informed that every hospital in the city was cooperating with the medical profession against the Group Health Association, with one exception?

A. Well, I may have heard it. I have read it recently, but I have no independent recollection.

Q. You remember a discussion of that character occurring?

A. I remember a discussion; that is all.

Q. Then, you say, you were present on November 11, I believe, when the Hospital Committee reported?

A. That is my recollection, yes.

Q. The chairman of that Hospital Committee was the defendant Warfield; is that so?

A. I believe so.

Q. Wasn't he reporting pursuant to the requirements of your resolution, which had been passed?

A. Absolutely.

Q. Do you remember that his report was rejected because it was not strong enough?

A. I remember it was rejected on a motion of somebody.

Q. Wasn't it rejected because it simply said—

A. (Interposing): What was the language?

Q. Well, let us find it.

"Dr. J. Ogle Warfield, Jr., chairman of the Hospital Committee, was recognized. He submitted the following report, pursuant to resolution which was adopted by the Society on the evening of November 3."

That was your resolution?

A. That is my recollection.

Q. (Reading):

"In view of the resolution adopted by the Medical Society of the District of Columbia on the evening of November 3, 1937, the Hospital Committee held a meeting, at my office, on the evening of November 9, 1937, and recommends that the Medical Society of the District of Columbia send the following resolution to the Boards of Directors of those hospitals"—

A. Interposing): No, to the Medical Boards.

Q. (Continuing reading):

"to the Medical Boards of the various local hospitals for interpretation to the Boards of Directors of those hospitals.' "

A. That was a change right there, you see, from the original proposal, which was a direct approach to the boards of directors.

Q. You mean this was a direct approach?

A. No, the letter for which mine was a substitute was a direct approach to the boards of directors.

Q. Your substitute contemplated approaching the boards of directors through the medical staffs?

A. Not at all. The original letter contemplated that. My motion tried to stop its being done.

Q. Doesn't this do the same thing?

A. No: " * * * send the following resolution to the Medical Boards" of the different hospitals.

Q. Isn't that what you advocated?

A. No, I didn't advocate any action; I simply made the resolution.

Q. I don't know what your point was with regard to the letter. The letter was to go directly to the directors?

A. That is what I am trying to say. The Sprigg letter was to go directly to the directors.

Q. You didn't like that?

A. I didn't like ~~its going out~~ at all. I didn't like its referring to Section 5, which, as I have testified, was not in my favor.

Then, here, the original proposal was to approach the boards of directors. My resolution stopped that and referred the matter to the committee, and then the committee came in on November 11 and urged sending the following resolution to the medical boards of the hospitals, which is a different proposition.

Q. Your resolution had pointed out that the way to approach the problem was through the medical boards?

A. No, that is not my recollection.

Q. Except for the control exercised over the medical staffs?

A. Over its own members—controlled over its own members of the Society who happened to be serving on hospital staffs. That would include, of course, more than the medical board; it would include the courtesy staff as well.

Q. And courtesy staffs have no influence as to who is to be elected to the staffs of hospitals?

A. No. My statement referring to the control of the Society over its members on hospital staffs included the attending staffs and the courtesy staffs.

Q. This was what Dr. Warfield suggested:

"That the hospitals accept patients from Group Health Association, Inc., provided that Group Health Association, Inc., is responsible for their financial obligations."

A. Yes.

Q. (Continuing):

"That these patients only be treated by the attending, associate, ~~assistant and courtesy~~ staff physicians of the respective local hospitals."

A. Yes. Now, what is it?

Q. That would mean, would it not, that the Group Health Association patients could be treated by people like Dr. Scandiffio, who was on the courtesy staff of Sibley, for instance?

A. Yes, or—Yes.

Q. Then, is it not true that one doctor in the discussion, Dr. Daniels, said that he was of the opinion that members

of the local medical staffs of hospitals were required to be members of the Medical Society of the District of Columbia, and that he would inquire if any of the members of the staff of Group Health Association were now members of the Society? Do you remember that?

A. It is so recorded in the minutes. I have refreshed my memory of it recently; I have no independent recollection of it.

Q. Don't you understand his point to be that under that resolution suggested by Dr. Warfield, or that communication suggested by Dr. Warfield, a man like Dr. Scandiffio, who was still a member of the District Medical Society, might be a member of the courtesy staffs of some of the hospitals and, therefore, could treat Group Health Association patients?

A. Yes. He apparently was trying to get information as to whether any of the staff of Group Health Association were still members of the Medical Society of the District of Columbia.

Q. Do you recall what Dr. Neill said in answer to that question?

A. No.

Q. Could you refresh your recollection by looking at the minutes?

A. It would call up no recollection independent of the fact that I would assume the minutes was correct if it were read to me. I would have no recollection of it, I am sure.

Q. Do you know what happened to that resolution of Warfield's?

A. It was re-referred. I know that it was re-referred to the committee.

Q. Do you know the grounds on which it was referred?

A. It was re-referred to the committee. I know there was some discussion about it, and my recollection is again refreshed from having read these things over in the last few weeks. There was a question as to whether the provision of the original report would cover GHA physicians practicing at the hospitals—I mean some way to prevent their practicing, or would not prevent it; something of that sort. That is my recollection of it. It was along that line.

Q. Then, wasn't a motion made by Dr. Yater to recommit it because there was no assurance given that Group Health Association doctors were not on the staffs?

A. That is my recollection.

Q. Did you vote for it?

A. I have no recollection, Mr. Lewin. Let me see it.

- No, I have no recollection one way or the other. My best belief would be that I didn't, because it wasn't—because I wasn't in sympathy with that method of approach at all.

Q. The resolution was seconded and finally adopted, according to the minutes. Do you know who seconded it?

A. No; I don't.

Q. Isn't it true, then, that on December 1, when you were also present, Dr. Warfield's committee made a further report pursuant to that resolution recommitting it?

A. Yes. Well, Mr. Lewin, I remember distinctly having been present at the meeting of November 11. I have no independent recollection of having been at that meeting of December 1. I may have; I simply don't recall whether I was there or not.

Q. But you do know, do you not, that pursuant to that report of December 1 the resolution was adopted?

A. Oh, yes. At least, I know that from the minutes, yes.

Q. You do know that the effect of that was—

A. (Interposing): To call the attention—To request the medical boards of the hospitals to call the attention of the boards of directors to what I have now learned was the Mundt Resolution.

Q. Did you follow out the rest of the procedure followed by the Hospital Committee under that resolution?

A. I don't believe I understand your question, quite, Mr. Lewin. What procedure?

Q. Did you know that later, in February of 1938, a resolution was passed by the Society, asking for a report on what the status of Group Health doctors was in the various hospitals?

A. I believe that that matter has again been refreshed in my memory from various minutes recently. I have no recollection of it. You misunderstand. The resolution I had made was just to prevent action by the Medical Society which I disapproved of. My interest has waned from there on. I have done my best to accomplish what I wanted, and I wasn't materially interested in the matter one way or the other.

Q. Did you object to the later proceedings taken by the Hospital Committee and the Society after your resolution

with regard to admitting Group Health doctors into hospitals?

A. Well, the proposal—As I have testified, I don't even remember being present at that meeting when it came up; and when it got to the hospital boards, as I testified this morning, it was apparently in my absence, and the first chance I had anything to do with it was when the medical board came back with the recommendation that we move to rescind it, and I moved to rescind it.

Q. But you knew that there was such a recommendation at the time you were passing upon Group Health doctors' applications?

A. No, I have no recollection of that at all. I don't even remember when I was passing on Group Health applications.

Q. Didn't you know that if that recommendation was followed, Group Health doctors could not be in the hospitals, regardless of their personal qualifications?

A. It didn't make any difference what I knew about it. I was the one who moved that it be rescinded, so I couldn't have been very much in favor of it, since I moved to rescind it.

Q. Well, did you ever move to rescind the action of the Hospital Committee?

A. What action?

Q. The action of the Hospital Committee in sending out questionnaires and getting facts as to the status of Group Health doctors in the hospitals?

A. I don't even know. I was present at those meetings and had no interest.

Q. I think you testified that you did not raise any objection to Dr. Scandiffio's treating babies whom you had delivered?

A. That is correct.

Q. As a matter of fact, isn't it the ordinary practice of an obstetrician to carry the case through until after the birth of the baby and then to give the case, as far as the health of the baby is concerned, up?

A. It varies greatly in different jurisdictions and according to the practice of different individuals. I know one very prominent obstetrician in town who refuses to let a pediatrician get into the hospital over his dead body to look at a baby he has delivered. As far as I am concerned, as I told you this morning, the sooner I get rid of them,

the better. But if there is no pediatrician in attendance—I mean if the patient—the father or the mother of the child—does not request a pediatrician, I naturally, to the limited extent of my ability with babies, keep track of them as long as they are in the hospital, to see that they are doing all right until they go home, and then I have them call a pediatrician.

Q. But you do not call Dr. Scandiffio yourself?

A. No, the patient calls him; I wouldn't call him in. I follow the usual procedure of telling the nurse to call him up. I never contact pediatricians.

Q. You do not contact Dr. Scandiffio yourself?

A. No, I have no recollection of having asked him.

Redirect examination:

My action in voting as I did with respect to Dr. Scandiffio was not influenced or controlled at all by the fact that he was a Group Health doctor; it was controlled by the fact that he had violated three or four different provisions of the constitution. My action in voting as I did with respect to Dr. Selders at Columbia Hospital was not controlled or influenced at all by the fact that he was a Group Health doctor, as there was no question in my mind whatsoever that he was not qualified to do the work he requested permission to do in his original application. Dr. H. J. Russell McNitt was a member of the staff, and was one of the attending surgeons in gynecology at Columbia, and is now on duty with the United States Army at Denver. He is a member of the Gynecological and Medical Society, whom I have known 15 years; I know his work on the staff; I also know he is a diplomat of the American Board of Obstetrics and Gynecology, which is the highest evidence of professional ability in that specialty that any man can provide in the United States; that means that he has passed an examination, written, oral, and practical, and is certified as a specialist in obstetrics and gynecology by the American Board of Obstetrics and Gynecology, a national organization, and is certified as a specialist and expert in obstetrics and gynecology, limiting his work to that specialty.

Def. Ex. 51 was received in evidence and read to the jury as follows:

“December 30, 1937.

“Col. P. M. Ashburn, Supt. Columbia Hospital, Washington, D. C.

DEAR COL. ASHBURN:

I am directed to report on the following physicians whose names were submitted to the Society for advice, concerning qualifications for courtesy privileges on your staff: Drs. Oliver C. Cox, Richard Castell, Raymond Selders.

We do not consider them qualified to do operative obstetrics.

Sincerely yours, H. J. Russell McNitt, M. D., Secretary.”

DR ELIJAH WHITE TITUS, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I reside in Washington; I have been a doctor, a practicing physician in Washington, since 1911. I graduated from George Washington University Medical Department in 1910. I had one year and three months at Columbia Hospital for Women, and in the fall of 1919 I received an appointment as resident gynecologist at one of the hospitals in New York, where I spent a year; then I returned to Washington and began to practice my profession, limiting my work to obstetrics and gynecology; from 1912 to 1919 I was assistant deputy coroner and then deputy coroner for the District of Columbia. I am a member of the Medical Society and a Fellow of the Washington Gynecological Society, and of the Galen Hippocrates Society. The Gynecological Society was formed by a group of obstetricians and gynecologists. I was its president during 1937-1938. In 1937 I was chairman of a committee engaged in assisting hospitals in determining the qualifications of applicants for privileges of practicing on hospital staffs. The committee was appointed by the gynecological society as it was felt that the committee was necessary, as the hospitals had a very definite responsibility to the public in the men that they admitted to practice, especially in special branches. I was a member of that committee in the fall of 1936 but in

that year the committee had little to do, as we were forming. In the first part of 1937 we sent a form letter out and had a few meetings and a few applications. In 1937 that committee was dismissed and I was appointed chairman of a new committee composed of Dr. Kane, Dr. Kotz, Dr. Martel, and Dr. Sylvester, and we were fairly active from October on, in 1937.

I have had some connection with the staff of Columbia Hospital since 1911, and I am now one of the attending gynecologists, and chairman of the medical board, and, at present, I am a member of the Board of Directors of the hospital. In 1937 Dr. Raymond E. Selders made application to the Columbia Hospital for privileges. The hospital sent that application to my committee in the Washington Gynecological Society for determination of the qualifications of Dr. Selders and furnished us with a copy of the application, together with his references and also certain statements of the amount of surgery he had done, both in Worcester, Massachusetts and Houston, Texas. We sent communications to the references given and received replies, one from Dr. Robert A. Johnston, a prominent obstetrician and gynecologist in Houston; the other from a Dr. Berry, one of the surgeons of the staff of Worcester Hospital, and it came to me through Dr. Bullard of the surgical staff of the Women's Hospital. I don't have the original letter from Dr. Johnston, as he requested that I destroy it, which I did, his statement being that the contents of the letter were so unfavorable and he had made a frank statement of the thing, but he felt he would rather have it destroyed. The letter was quite unfavorable in content to Dr. Selders.

I received Def. Ex. 52, a letter dated December 16, 1937, from Dr. Berry to Dr. Bullard from Dr. Bullard.

Def. Ex. 52 was received in evidence and read to the jury as follows:

"December 16, 1937.

Dr. Edward A. Bullard, 580 Park Avenue, New York City,
New York.

DEAR CINDY:

Your letter comes inquiring about Dr. Raymond Selders. I have discussed him with the Superintendent, Dr. MacIver and with one of the chief surgeons, of the Worcester City Hospital. He was Resident there from July 1st, 1936 to

July 1st, 1937. The story goes that he was a graduate of the University of Oklahoma and then practiced in Dallas, Texas, for ten years. Apparently he took a surgical internship in there somewhere. Then he went to the University of Pennsylvania where he had, they think, two years of a basic post graduate course in surgery. He came from there here for the completing year in practical surgery.

While here, he is listed as having taken active part in 273 operations, 190 of which would be classed as major and 83 as minor. Dr. MacIver does not know whether he did any more or whether he did all of these and they could not discover this point without going through all the records. This gives an approximate idea. One gets the impression that he is taking a good deal of time in preparation for his life's work. He is about forty-six years of age and now contemplates further preparation. They think he has been married twice.

The story while here in Worcester is somewhat as follows: when he first came, he seemed to feel the need of expressing his importance. He tried to convey the idea that the surgical internes should look to him for instruction and material. The discrepancy between his age and that of the interns exaggerated their objection to his policy and thus early in his Residency there was engendered lack of harmony. This lack continued on through his year of service. He himself was somewhat of an emotional and breezy type which found everything going well some days, while at other times he acted out of sympathy with the world.

This slightly unstable disposition was evidenced at times in his operative work. Sometimes he showed proper skill while at other times a seeming conceit led to careless and hasty surgery. The visiting men, either through this trait or through the animosity engendered among the house officers, hesitated to trust him with as much work as they would have liked to have done.

In retrospect, these two men whom I talked with felt that much of his trouble was due to his failure to fit into the picture when he first came. If he had been a bit more thoughtful and patient, he would have gotten off on the right foot and then the resulting harmony would have carried him along in a happy way. Finding himself out of harmony, there was a tendency to get worse rather than better. They feel that perhaps they made a mistake in taking a man so much older than the internes.

Dr. MacIver felt that he showed perhaps an average skill in his surgical work but that there was certainly nothing startling either about this skill or about his constructive research efforts. He did not go to Dr. MacIver from time to time in a complaining spirit but stuck it out as best he could.

I judge this picture fits somewhat with the opinion you have already formed about him. Placed under certain conditions I would gather that he could do good and faithful work, but put into a group that is somewhat self sufficient, where he is a stranger feeling it necessary to establish his own importance in the scheme of things, he might repeat the difficulty he had here and find his experience lacking in harmony and efficiency.

I hope this report will help you. Both the men I talked with were anxious not to injure his chances for the appointment he is seeking. But I told them that you deserved as honest a statement as could be secured and I think I have correctly interpreted their feeling.

Dr. MacIver felt that some of the staff liked him better than others and I judge that the member of the staff whom I picked was one of those who liked him the least. He would wish you to give the man all the credit you could. You will have to conclude as to whether this particular type of worker is fitted for the task he is seeking.

Cordially yours; Gordon Berry, M. D."

On the basis of the information received from Worcester and from Houston my committee came to the conclusion that Dr. Selders was unqualified for the privileges sought and so advised Columbia Hospital.

Cross-examination.

By Mr. Lewin:

The letter from Dr. Berry to Dr. Bullard influenced us to some extent, but we gave greater weight to the letter from Dr. Johnston from Houston. I happened to write to Dr. Johnston as he was a very prominent man in gynecology at Houston; I had met him and he was on the staff of several hospitals. Dr. Selders didn't give his name as a reference but stated on his application blank that he had been in general practice for seven years in Houston, and during that time has performed something like 430 operations, but

he didn't classify them as to whether they were major or minor. Dr. Selders on his application, a copy of which we have, didn't give Dr. MacIver or Dr. Byrne as references. Our committee only considered his application insofar as it pertained to obstetrics and gynecology, as we had no request to consider any application of Dr. Selders for major surgery.

I am chairman of the committee on the attending staff at Columbia and a member of the District Medical Society, on the attending staff at Garfield, have a faculty position at George Washington Medical School, which makes me chief of gynecology there. Dr. Kane, who is on the committee, is a member of the Medical Society. Dr. Martel, who is on the committee, is on the staff of Georgetown and a member of the Medical Society. Dr. Sylvester is one of the attending obstetricians at Columbia, and Dr. Kotz had courtesy staff privileges at Columbia, but no staff appointment. Dr. McNitt at that time was secretary of the Gynecological Society.

The only time I ever saw Dr. Selders was on a case at Columbia. He didn't make a request to come before our committee and we didn't invite him to. The Gynecological Society took the position that it was not up to it, a society of specialists, to advise the hospital concerning the practice of general practitioners, so we didn't consider Class III privileges, normal obstetrics. At the time we passed on Dr. Selders' application we had some other information from local men which concerned some work he had done at Garfield Hospital concerning abdominal surgery, involving a diagnosis as gynecological but it turned out to be something else. And one case involved a very definitely mistaken diagnosis, according to what we heard, and it was attributed to Dr. Selders, and that influenced us in our judgment.

Since Dr. Warfield succeeded me as chairman of the hospital committee of the Society I have only been to the Society three times. I have some knowledge of the controversy concerning Group Health, but I didn't obtain it from attending meetings in the District Medical Society.

Redirect examination:

An obstetrical case involving Dr. Selders came to our attention at the time we were passing upon his qualifications in 1937. The case involved an abnormal delivery and Dr.

Selders was watching the delivery and remarked that he hadn't done one of those for a long time, or hadn't seen one for a long time.

I recognize Def. Ex. 53 as a copy of a letter which I received from Dr. Robert A. Johnston, dated November 22, 1937.

Def. Ex. 53 was received in evidence and read to the jury as follows:

"November 22nd, 1937.

Dr. E. W. Titus, 900 17th Street, N. W., Washington, D. C.

DEAR LIGE:

Your letter received concerning Dr. Selders, and after inquiry, I found the following facts. He was in Houston during the time stated but he was not anything to brag about. He was quite interested in music, and I found out from some of his associates that he acquired a huge office and tried to attract attention that way. Apparently he has had opportunities to acquire knowledge, but he seems to get in most anyone's hair by his pushing tactics. From the reports I have obtained, I do not think that one could give him a most favorable recommendation. I feel sure that you will keep this confidential."

Then the following paragraph:

"I feel that my obstetrics will keep me here and away from the Toronto meeting. It may be possible for me to leave at the last moment.

With best wishes, I am

Your friend, Robert A. Johnston, M. D."

I attach a great deal of importance to Dr. Johnston's letter, as I happen to know him over a great many years; he is a very prominent man, belongs to a small organization called the Gynecological and Obstetrical Travel Club, and I see him each December, with very few exceptions. At the time we reported on Dr. Selders we also reported unfavorably on quite a well known surgeon here in Washington who applied for privilege of major obstetrics in Columbia. We reported unfavorably on two members of our own Gynecological Society. As a member of the medical board of Columbia Hospital I have seen no questionnaires coming from the Medical Society to Columbia Hospital Board.

Recross-examination:

I don't have a copy of the letter I sent to Dr. Johnston eliciting his reply, but I remember I told him that we had a man who had made application to Columbia Hospital, giving certain references, one of them in Houston, Texas, and would Dr. Johnston at his earliest convenience send me a report of what he knew or could find out about him, and, as far as our questionnaire went, he gave Houston, Texas, only as a reference, without giving any doctor's name in Houston. Later, in December of 1939, I believe I informed Dr. Johnston about Dr. Selders' connection with Group Health.

DR. JAMES F. MITCHELL, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I reside in Washington. I have been a practicing physician and surgeon in Washington since 1903. I took my preliminary training for the practice of medicine at Johns Hopkins in 1893. I graduated in 1897 and stayed on there until 1903, when I returned to Washington. I am chief surgeon at Emergency Hospital and have been since 1919, when I came back from France. I served in France four to five months as chief surgeon in Evacuation Hospital No. 32 near Toul, and in Sebastopol Hospital near Lemar. I am on the Board of Directors of Emergency Hospital and on the Executive Committee in surgical staff.

The Executive Staff deals mostly with finances and business affairs of the hospital. The Board of Directors is the board of last appeal that regulates everything. We have an attending and courtesy staff at Emergency Hospital. The rule governing applicants for privileges to the courtesy staff at Emergency was passed in April, 1936. We have been having a great deal of trouble with people who were not competent coming into the hospital to treat patients, and we considered the matter quite awhile as to having some sort of regulation to restrain this sort of thing. In April, 1936, a resolution was passed by the Board of Directors that any applicant for courtesy privileges would have to present his application and, in addition, show that he was licensed in the District of Columbia, had a medical degree, and was a

member of the Medical Society, and must present evidence of his ability to practice in the particular field in which he applied for privileges. There were 50 members on the Board of Directors when that resolution was passed, with Mr. Blair as president; other members that I recall were Dr. Willis, Mrs. Huidekoper, Ben Miner, the head of the FBI, Dr. Neill, Dr. Ruffin, Dr. Leadbetter, Dr. Kraisselman, and other medical men and laymen.

In determining the qualifications of an applicant the application is turned over to what we call a courtesy committee of three men, who investigate the applicant to the best of their ability; they then report to the staff, and his name would be brought up before the full staff at a meeting and the application discussed; every man seeking privileges is gone over in that way. If the man is known the procedure is very simple; if the man is not known, however, to any of the members of the staff and we are not satisfied as to his professional ability, then we would appeal to the Washington Academy of Surgery, from whom we would obtain a report on him, and the matter would then be further considered. The regulation requiring membership in the local Medical Society means that when a man applies for membership in the Medical Society his record is investigated, and the fact that he is a member of the Medical Society shows that he is reputable, which obviates the necessity of a good deal of investigation on our part.

Sometime in 1937 the hospital availed itself of the facilities of the Washington Academy of Surgery. Late in 1937 or in the beginning of 1938 Dr. Selders applied to the hospital for general surgical privileges and his application was referred to the Washington Academy of Surgery for investigation. We did this to save us investigation work. Following the adoption of the rule requiring membership in the local Medical Society there were members on our courtesy staff who were not members of the local Medical Society, because originally there was no courtesy staff, and we just allowed them to come in, and there were probably some excellent men who had been coming in who were not members of the District Medical Society or were members of other medical societies. Following the adoption of the rule the policy of the hospital was that new applicants had to be members of the Medical Society and present proper references as to their ability. Dr. Selders applied for privileges in general surgery and gynecology; in fact, all branches of

surgery. Such privileges are pretty broad, and they would cover any branch of surgery. We don't grant privileges at the hospital for a man to do general surgery and general gynecology, as a man is either a surgeon, a gynecologist, or an eye, ear, nose, and throat man. It is against our policy to let a man have more than one set of privileges. Before granting privileges in general surgery we must have word from someone who knows the applicant that he has done good surgery and is capable of doing good surgery. In his application Dr. Selders gave us several degrees but no men who were to vouch for these things and show that he was capable of doing his work. We then referred it to the Washington Academy to find out about these things and we got back a report from them; the reference to the Washington Academy of Surgery was verbal and the report back was verbal. Dr. Selders' application showed that he was not a member of the local Medical Society, and that matter was discussed in connection with his application, but the fact that he was a member of the staff of Group Health didn't enter into the discussion against him, and didn't make the least difference to us if he fulfilled our requirements.

When Mr. Blair informed Mr. Penniman that "Dr. Selders or other representatives of Group Health Association must first be placed on our courtesy list before they can treat patients in the hospital" (Gov. Ex. 370), he was applying our general rule, as any applicant who wishes to treat a patient in Emergency Hospital must first become a member of the courtesy staff. I am familiar with the other hospitals in the District, and I have been in a great many of them.

Q. Do you know of any hospital where it is not necessary to join or be admitted to the courtesy staff before being permitted to treat patients in those hospitals?

Objected to as opening up a collateral inquiry. Objection sustained and exception noted.

The matters and facts stated in Gov. Ex. 373 are true. (Defense counsel read Gov. Ex. 373 to the jury.) The resolution of April 17, 1936, was passed at Emergency Hospital simply because we wanted to be sure men who had the privileges could render their patients the proper service.

As a result of Gov. Ex. 391 a conference with Mr. Kirkpatrick was held at which I was present. (Defense counsel read Gov. Ex. 391 to the jury.) Mr. Russell, Mr. Kirkpatrick, Mr. Blair, and I attended the conference. They

were urging the appointment of Dr. Selders to the courtesy staff. Mr. Blair was very sympathetic but told them again, just as he had told them before in his letters, that before a man could do work at Emergency he must be a member of the courtesy staff and had to fulfill certain requirements which Dr. Selders did not do. I don't recall any applicant being admitted to courtesy privileges since the resolution in 1936 who were not members of the local Medical Society. Nothing was accomplished in the conference as Mr. Russell kept insisting that we should take Dr. Selders on the courtesy staff and Mr. Blair simply stated that he could not take anybody on that did not fulfill the requirements. I don't remember that anything was said about the refusal having anything to do with Dr. Selders' Group Health affiliation.

Cross-examination.

By Mr. Kelleher:

The verbal communication to the Washington Academy of Surgery was made through our secretary, Dr. Lyons, who was a member of the Academy himself. The verbal communication occurred when we were considering Dr. Selders' application. The communication received from the Academy simply showed us he was not qualified. The grounds for denying Dr. Selders privileges were his qualifications and one of those was that he was not a member of the Medical Society, and the other was that he was not surgically qualified. I identify Gov. Ex. 663 as the minutes of a meeting of the executive staff of Emergency Hospital of December 21, 1937. Gov. Ex. 663, the last paragraph thereof, was received in evidence and read to the jury by the Government as follows:

"Two letters from Mr. Wm. Penniman, President, Group Health Association, Inc., were read. These letters requested, first, that patients of the Group Health Association be admitted to Emergency Hospital upon the request of Dr. Henry Rolf Brown, Director, and, second, that Dr. Raymond E. Selders, Surgeon, be permitted to attend these patients while hospitalized. The Staff recommended that Mr. Penniman be informed that patients of the Group Health Association would be admitted to Emergency Hospital upon the request of Dr. Henry Rolf Brown, Director, and that

he be further informed of the regulation adopted by the Board of Directors on April 17th, 1936, requiring that all physicians placed on the Courtesy List must be members of the District Medical Society, and that since Dr. Selders is not a member of the District Medical Society, he could not be placed on the Courtesy List of the hospital."

Q. Was there any discussion at this meeting of December 21 other than the facts as shown in the minutes?

A. I shouldn't think so; I didn't read them carefully.

Q. And there isn't anything in the minutes to show that the recommendation of the Washington Academy of Surgery was considered?

A. Nothing there that I see. That was certainly not the only decision on Dr. Selders.

Q. Doesn't that show that the executive staff decided that he couldn't be placed on the courtesy staff?

A. That he hadn't been placed on the courtesy staff.

Q. Isn't that the decision of the executive staff?

A. I imagine so, yes.

Q. That decision was based on the fact that he did not have membership in the local medical society?

A. It was not by us, as I remember. That may have been sent to the society, but we always, in considering any man, consider his qualifications.

Q. But, as a matter of fact, when Mr. Penniman was notified by Major Blair on December 30, 1937 (Gov. Ex. 373), the ground stated was that he was not a member of the local Society?

A. Does Blair say that in his letter?

Q. Will you look at exhibit 373?

The Court: That was read just a short while ago. That is what the letter stated. It does not do any good to ask the doctor about it. The letter itself shows what it says.

By Mr. Kelleher:

Q. As a matter of fact, then, Dr. Selders was denied privileges because he was not a member of the local medical society?

A. One reason, yes, sir.

Q. And the only reason given in the minutes and in the letter to him.

A. That may be.

Q. You knew, did you not, that Dr. Selders was a member of the Harris County Medical Society and of the American Medical Association?

A. I saw that in his application, yes.

Q. You saw that in his application?

A. Yes.

Q. Will you identify this as the minutes of the meeting of October 14, 1937, of the executive staff? It is a photostatic copy. Can you identify this as the minutes of that meeting?

A. Yes.

Gov. Ex. 664 was received in evidence (last paragraph only) and read to the jury as follows:

Gov. Ex. 664 is a photostatic copy of the minutes of the regular meeting of the executive staff of Emergency Hospital, held on October 14, 1937. From these minutes I read the following:

"Attention of the staff was called to the matter that occasionally an applicant for courtesy privileges will be a member of his local medical society, but not of the District Medical Society. It was ruled that ordinarily this would meet the requirement of the hospital that a man be a member of the District Medical Society."

By Mr. Kelleher:

Q. Dr. Mitchell, as a matter of fact, with respect to Dr. Selders' application, this interpretation adopted on October 14, 1937 was not applied, was it?

A. I beg your pardon; of the local medical society?

Q. The interpretation put on that regulation of Emergency at the meeting of October 14, 1937, that membership in another local medical society of the AMA would ordinarily be sufficient.

A. Isn't it in his own local medical society, or is it another one?

Q. "It was ruled that ordinarily this would meet the requirement of the hospital that a man be a member of the District Medical Society."

A. That is local.

Q. Wasn't Dr. Selders a member of the Harris County Medical Society?

A. No, he was practicing in Washington.

Q. Wasn't that his local medical society?

A. It had been; it wasn't then.

Q. As a matter of fact, then—

A. (Interposing) We understood he had been expelled from his local society.

Q. When did you understand that?

A. At the time of his application.

Q. In December, 1937?

A. Well, now, the date I cannot tell you, sir.

Q. What led you to believe that as of that time he was expelled from the Harris County Medical Society?

A. I cannot tell you the date, but I know when we were considering him he was expelled from his local society.

Q. If, as a matter of fact, he had not been expelled from his local society, he would have been eligible?

A. His local society when he was practicing in the District was the District Medical Society.

Q. As a matter of fact, Emergency Hospital did not require that all applicants be members of the Medical Society of the District of Columbia?

A. Yes, of the local society of the district in which he was practicing at the time. We have men in Virginia, for instance, who are members there.

Q. That, Doctor—

Mr. Leahy: Let him finish.

By Mr. Kelleher:

Q. I did not mean to interrupt you. Have you finished, Doctor?

A. I was not through.

Q. Finish your answer.

A. We have men in Virginia—neighboring Virginia—and neighboring Maryland who do not belong to the District Society but do belong to the local societies in the districts in which they are practicing.

Q. Do you permit them to practice in Emergency Hospital?

A. We let them come to Emergency Hospital.

Q. Isn't it also true that as late as June of 1938 there were members of the staff of Emergency Hospital who were not members of the local medical society?

A. Not on the staff; they may have been courtesy; but I don't know, as I explained before.

Q. I show you Gov. Ex. 472 and ask you to see whether it refreshes your recollection of whether or not as of that

date there were members of the courtesy staff who were not members of the local society:

A. Yes.

Q. Does not help you refresh your recollection?

A. I see that, yes.

Q. It is true, then, that as late as June of 1938 there were on the staff of Emergency Hospital—on the courtesy staff—

A. (Interposing) On the courtesy list.

Q. (Continuing)—doctors who were not members of the local society?

A. Quite probably, yes, but were members of their local societies in the neighborhood.

DR. A. MAGRUDER MACDONALD, a witness for the Defendants.

Direct examination.

By Mr. Leahy.

I reside in Washington. I have been a practicing physician in the District since 1915, when I graduated from Georgetown University Medical School; I interned at Emergency Hospital and was resident physician there for a period of two years; subsequently I was superintendent of Casualty Hospital for a year, then I went into the service and was abroad, first with the British Army and then with the American Army; on returning to the United States I remained in service at Camp Lee and on my discharge entered into the practice of medicine in Washington. I have been Coroner of the District of Columbia since 1934, and deputy coroner prior thereto since 1926; earlier I had been doing autopsies and post mortems in the District Coroner's office; I am on the council at Sibley Hospital, on the staff at Casualty, and I have courtesy privileges of treating patients in other hospitals in the city. My appointment at Silbey occurred in March, 1937. I am associate in surgery at Casualty. In 1937 at Casualty I was on the interne committee and in 1938 I was on the credentials committee. The functions of the credentials committee were to review the credentials of any individual applying for admission with the privileges of treating patients in the institution.

While I was on the credentials committee at Casualty an application of Dr. Selders came before my committee

for investigation and report. This happened in June, 1938. Certain letters and statements concerning Dr. Selders were presented to me for my consideration. I passed on this material and made a recommendation as to what those qualifications indicated, and recommended against granting privileges to Dr. Selders at Casualty. I saw letters from the Worcester City Hospital at Worcester, Massachusetts, and from Dr. J. C. Alexander, of Houston, Texas, and a third from the University of Pennsylvania.

Defense counsel read to the jury as follows:

Letter dated April 25, 1938, from the Worcester City Hospital, over the signature of George A. MacIver, addressed to Miss E. M. Rogers, Superintendent of Casualty Hospital (Gov. Ex. 666):

"DEAR MISS ROGERS:

Dr. Raymond E. Selders served as surgical resident in this hospital for one year ending June 30, 1937, coming to us highly recommended from the Post-Graduate School of the University of Pennsylvania.

He participated in the surgical work of the hospital considerably and had an opportunity to gain considerable competence. Our operating schedules show that 203 cases were assigned to him for operation. This does not mean, however, that he actually performed these operations. He may have elected to assist in some of them. There is record that he actually performed and dictated 133 operations, 105 of which were classified as major. From the above I think you can conclude that his surgical training is such as to give him competence.

Yours very truly, George A. MacIver, Superintendent."

This is the letter of April 28, 1938, from Dr. J. C. Alexander, in the Shell Building, at Houston, Texas (Gov. Ex. 668):

"DEAR MR. ROGERS:

In reply to your letter regarding the qualifications of Dr. Raymond E. Selders, I beg to advise that his professional qualifications in surgery are well above the average and ethically and morally he has always been above re-

proach. During his several years of practice here he made many valuable lay and professional friends..

He is now a member of the Harris County Medical Society here.

Yours truly, J. C. Alexander."

Letter is a copy of an original on the letterhead of the University of Pennsylvania Graduate School of Medicine. It is addressed to the superintendent of Casualty Hospital and dated April 27, 1938 (Gov. Ex. 667):

"DEAR MR. ROGERS:

Dr. Raymond E. Selders was a student in the surgical group of the Graduate School of the University of Pennsylvania during 1935-1936, and he completed this basic year satisfactorily. He then went to Worcester, Mass., and spent a year in clinical training, and I understand that his work there was satisfactory to his preceptor.

Personally, I know nothing about his ability as a surgeon beyond this basic training which he had in Philadelphia, and I am sure you have a full account of his training before he came here. This training, according to his records, was broad, and he is a man of mature age and general experience.

Very truly yours, Walter Estell Lee."

During the discussion pertaining to Dr. Selders' qualifications, Dr. Caylor, who was on that committee and who was connected with Providence Hospital, stated that the matter had been referred to the Washington Academy of Surgery and that they had obtained an adverse report on Dr. Selders. From my observation of the letters received concerning Dr. Selders it is my opinion that Dr. Selders should have had more actual contact with patients and responsibilities before he went out into general surgery, and that he should serve an apprenticeship with some other surgeon for a period of time.

As a member of the council at Sibley Hospital I was assigned to three committees: the committee on surgery, the committee on X-ray, and the committee on laboratories, and as a member of the council I assisted in the investigation there into the qualifications of Dr. Selders. In Sibley Hospital when an individual applies for courtesy privileges a form is sent to us which has a notice on it that a certain person has applied for courtesy privileges in certain fields,

and that certain information is in the office. I received such a notation in November, 1937, concerning Dr. Selders, and my notation was this: "Not approved—need more information," because there was nothing except the application of the individual in the file, and I knew nobody of whom I could inquire who had seen this man perform any operations. It was not my particular duty to seek out information, and in referring the matter back to the hospital for more information it was the hospital's duty to supply me and each individual member of the committee with more information, and to my recollection this case was never referred back to me after I put in my original paper. At the time of passing upon the qualifications of Dr. Selders I stated that in view of certain controversies that had existed over a period of months concerning Group Health that those things should be discarded from our minds and that we should consider this application from the information at hand and the discussion of the credentials committee concerned his qualifications and experience.

The recommendation of the committee I was on went to the staff, and then from the staff to the board of directors. On the notice I received it was noted that the individual was an employee of Group Health, but having no information concerning Group Health that didn't enter into my mind at the particular time, because I wanted information so I could pass on him in justice to the man and to myself.

Cross-examination.

By Mr. Lewin:

When Dr. Selders' application was again submitted at Sibley I wasn't a member of the Executive Committee and the matter was not referred to me. All I can say concerning Dr. Selders is this: that in the folder concerning him was the application and no other correspondence. Report dated November 27, 1937, by Sibley Hospital on Dr. Selders, was marked Gox. Ex. 665 and offered by Government and received in evidence and read to the jury as follows:

"Applicant's credentials on file in the office of the President.

"Attention of the committee is called to the fact that above applicant is one of the salaried physicians of the Home Owners' Loan Corporation Group Health Associa-

tion and that information as to his qualifications and correspondence in connection with his application will be found on file in the president's office available to members of the various committees concerned for their information."

When I considered Dr. Seiders' application at Casualty in June, 1938, I did not go back to see what his references were at Sibley. I never saw the responses from his references at Sibley.

DR. JAMES A. CAHILL, a witness for the Defendants.

Direct examination.

By Mr. Leahy.

I reside in Washington. I am a practicing physician here, graduated from Georgetown University Medical School in 1915; then I was in St. Elizabeth's Hospital, Youngstown, Ohio; Providence Hospital, Washington, D. C.; Georgetown University Hospital, in Washington; and I was in the Army for two years. I am a Fellow of the American College of Surgeons and a member of the Washington Academy of Surgery and the District Medical Society. I am chief surgeon at Georgetown University Hospital, chief surgeon at Providence Hospital, consulting surgeon at Gallinger Hospital, consulting surgeon at Columbia Hospital, and professor of surgery at Georgetown University School of Medicine. I held all these positions on the hospitals during the years 1937 and 1938 and still hold them.

In 1937 there came a time when I wished to establish a residency in surgery at both Georgetown and Providence Hospitals, and I wrote a letter to Dr. William Cutter in Chicago, head of the Committee on Medical Education of the American Medical Association, requesting an inspector. I asked Dr. Cutter (Def. Ex. 16) to inspect both Georgetown University Hospital and Providence Hospital with reference to approving a residency in surgery at both institutions.

At the time I made this request I had never heard of Group Health, as the request went along in January of 1937. Dr. Peterson was sent by Dr. Cutter and investigated and made an inspection of both Providence and Georgetown Hospitals. I discussed the matter with Dr. Peterson. My discussions had nothing whatsoever to do with Group

Health. I don't know of the Mundt Resolution as such, but I have heard there was such a resolution.

There came a time when Dr. Peterson made a report of what he found on the inspection of the two hospitals. In the letter transmitting the report there was a suggestion made that members of the staff at Providence and Georgetown should become or were asked to become members of the local Medical Society. I am on the surgical staffs of both Providence and Georgetown Hospitals. The reports from Dr. Peterson came under the consideration of the surgical staffs and the general staffs of both hospitals.

There was absolutely no threat, no coercion, and no duress with reference to the suggestion that members of the staffs become members of the local Medical Society. I was present at the staff meetings when this suggestion concerning membership was discussed. The staffs considered that they were willing to cooperate in helping to make the hospitals better and did not consider the suggestion a threat.

Georgetown Hospital was approved first for residency in surgery. Providence Hospital was asked to make certain changes for the betterment of the institution, and then it was approved for residency in surgery. At Georgetown a rule was adopted asking members of the staffs to become members of the District Medical Society, and a similar rule was adopted at Providence, but all the members of the courtesy staff at Providence Hospital are not members of the local society. There are members on the staff now and there were members on the staff then, at the time of the inspection, that are not and were not then members of the local Medical Society or the AMA. That is also true with reference to Georgetown.

At Providence I never saw a questionnaire from the hospital committee of the local society, nor did I see such a questionnaire at Georgetown. The so-called Mundt Resolution has never been used either at Georgetown or at Providence against anybody on the staff. The Mundt Resolution as adopted by Georgetown and Providence had nothing whatsoever to do with Group Health or members of the staff of Group Health. In adopting the principle of the Mundt Resolution the staffs at the hospitals believed that members of the local society should be members in the practice of medicine who were interested in advancing the betterment of the hospital, so that patients could be treated better and

so that advancements in science could be recognized when they were brought in.

Cross-examination.

By Mr. Lewin:

Sometime after the receipt of Dr. Cutter's letters Georgetown Hospital and Providence Hospital for the first time required membership in the District Medical Society for its courtesy staff. Dr. Caylor sent the provisions of the resolution to the members of the staff, not as a requirement but as a suggestion. At Georgetown the same suggestion was adopted in the late fall of 1937, and the same type of letter was sent to the staff.

DR. CLAUDE C. CAYLOR, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I sent a letter to the members of the staff at Providence under the direction of the medical staff simply to notify the men of the recommendation of the AMA that all members of our staff should belong to the AMA or one of its constituent bodies (Gov. Ex. 501). On receiving the instructions from the staff no instructions were given as to the form of the letter or the words to be used, and that was left to my discretion. After sending out the letter I never did anything further toward checking up. As I recall, I sent the letter to six doctors, and each of them spoke to me personally; and, while I don't know as a matter of fact, my impression was that they all joined the Medical Society. We have members on the staff at Providence who are not members of the local Medical Society. I never thought of the recommendation of the AMA as a threat or a form of coercion against Providence Hospital.

Cross-examination:

I am secretary of the executive staff. I signed the minutes of the meeting of the executive staff at Providence on February 17, 1938, and those minutes show that after my letter was sent out I was able to note general compliance

with the recommendation of the AMA on the part of the doctors on the Providence staff.

SISTER ROSA, a witness for the defendants (of Providence Hospital).

Direct examination.

By Mr. Leahy:

I am superintendent of Providence Hospital and have been for four years. Before coming to Providence I was protectress at the Mother House at Emmittsburg, Maryland. On coming to Providence I supervised the entire hospital in all departments.

I recall that there came a time when I wanted a residency in surgery approved at Providence Hospital. I think Dr. Caylor took the matter up. I recall that there came a time when an inspection was made of the hospital by representatives of the AMA. I remember that a Dr. Peterson was there at the hospital. Providence has had inspections made of it quite frequently. We had an inspection to give us permission to train residents, we had inspections of our school of nursing twice a year from New York State and the District, and we have inspections by the College of Surgeons and the AMA. The purpose of the inspections which are made by the AMA is to raise our standards. I requested them to come, so that I could know wherein we were making mistakes in regard to training internes, as we were then trying to raise our standards for the training of residents, including residents in surgery. We finally got the privilege or approval in 1939, I think.

After the inspection was made of the hospital a report came to me of what the inspector found (Def. Ex. 23). I read it over several times, and then I wrote a letter dated August 27, 1937, when I was acting superintendent of the hospital (Gov. Ex. 240).

I do not remember the letter of Dr. Peterson or Cutter which accompanied the report of inspection made at Providence Hospital (Gov. Ex. 239). I recognize the letter dated October 12, 1937, to Dr. Cutter, of the Council on Medical Education and Hospitals (Gov. Ex. 241), as a letter Dr. Caylor or some of the doctors wrote, and, if I am not mis-

taken, asked me to sign, and I signed it. I read it and they asked me to sign it to verify what the hospital thought in regard to this matter; that I represented the hospital, and that if I put my name here (indicating) it would verify the statements made in it. I did so sign and verify it after reading the letter.

I invited these men, at the time I have reference to, to come because I was most anxious to train residents, and these men were anxious for it, and I was backing them up, and I wrote it for them to give us constructive criticism, and that is what I considered it. I did not consider it coercion or threat or anything of that kind, any more than when the District Nursing Board examines us and makes recommendations.

We always try to carry recommendations out 100 per cent, but I do not consider them a threat, because some of them we can't carry out very well. We try to do the best we can.

Nothing that I did in connection with meeting the requirements or recommendations of any report or any suggestion which was made by Dr. Peterson or the American Medical Association had anything whatsoever to do with Group Health.

I remember that a Dr. Selders made an application for privileges at Providence Hospital. It was sent by us to the Washington Academy of Surgery, and a recommendation was received back from the Academy. Dr. Valentine Hess was our medical director at that time. The letter to Dr. Hess, dated January 31, 1938, Gov. Ex. 448, states that the Committee on Hospital Privileges of the Washington Academy of Surgery recommends disapproval of the applications of three physicians, one of them being Dr. Raymond E. Selders, to do major surgery at Providence Hospital.

After the witness left the stand the Government read two excerpts from the letter dated August 21, 1937, from Dr. Cutter to Sister Margaret (Gov. Ex. 239) as follows:

It is dated August 21, 1937, from Dr. Cutter to Sister Margaret, Superintendent of Providence Hospital. I will simply read this sentence from it (reading):

"As matters stand now we believe quite likely that when this statement is submitted to the Council at its regular meeting early in November internship approval will be withdrawn. Similarly the application for approval of a

residency in surgery is held in abeyance pending the adjustment of the present situation."

Then:

"We also append for your information a resolution of our House of Delegates of the American Medical Association."

Then follows the Mundt Resolution, and then:

"According to our analysis there are six members of your staff who are not affiliated with any of the constituent societies of the A.M.A."

The Court: Call your next witness.

Mr. Leahy: May I call attention to a paragraph there?

The Court: Yes.

Mr. Leahy (reading):

"You will recognize that there are several factors that are not in conformity with the Council's regulations governing internship approval. It is a matter of great interest to this office, therefore, to learn whether the recommendations enumerated at the end of the report are acceptable or not.

Then follows the sentence beginning "As matters stand now," which was just read by Mr. Lewin.

DR. DANIEL L. BORDEN, a witness for the defendants.

Direct examination:

By Mr. Leahy:

I reside in the city of Washington. I am a practicing physician here in the city. I graduated from George Washington University, doctor of medicine, in 1912. I was in Columbia University for a period of three years, then at George Washington University Hospital. I received training under the immediate supervision of my father, who was a surgeon before me. After that I went into the Service in 1917; I was in the Service for over two years. I am chairman and senior operating surgeon of the Board of Police and Fire Physicians of the District. I am a member

of the District Medical Society and the Washington Academy of Surgeons and was one of the Academy's founders. The Academy of Surgery was founded by a group of surgeons in Washington, with the thought of maintaining and increasing the general prestige and standards of the practice of surgery in the District of Columbia. During 1937 and 1938 I was a member of the credentials committee of the Academy.

As far back as 1935 the Academy discussed the question of some type of standards committee to examine applicants for surgery in the various Washington hospitals, and in 1936 this was started as a committee, and I was appointed to that committee and remained on that committee until I became president of the Academy in 1938.

The credentials committee is composed of five men elected originally by the Academy, and in recent years they are elected or appointed by the president. The functions of this committee are to review all applicants for surgical privileges in the various Washington hospitals; that is, such hospitals that are to submit applicants' applications for the Academy for an opinion. This opinion is an advisory one only. All applicants are required to fill out an application blank giving all of their qualifications. Then in addition they must have on that blank the names of at least three sponsors, men who will go on record in writing as stating that the applicant is capable of doing general surgery.

An application of Dr. Raymond E. Selders came before the credentials committee of the Academy for investigation. The first time I heard of it was at a meeting at Dr. John Lyons' office. He was then chairman of the credentials committee, and the name of Selders was presented to the committee. At that time we had nothing except his application blank, which was read and referred to Dr. Fred Sanderson for an investigation. The following month, January, 1938, Dr. Fred Sanderson reported to the committee his findings.

It is the habit or custom for the chairman of the credentials committee to investigate most of the applicants, but John Lyons and I on the particular occasion were planning to go down to a meeting of the Southern Surgical Association, so Dr. Sanderson was asked by Dr. Lyons at the meeting to investigate the qualifications of Dr. Selders.

After about a month's time a report was made back by Dr. Sanderson to the credentials committee. The committee was composed of Dr. Lyons, Dr. Sanderson, Dr. Paul Putzki, Dr. Arch Riddick, and myself.

The six men named in Gov. Ex. 445-A came to the attention of the credentials committee on December 8, 1937. In January, Def. Ex. 44 came before us for consideration. The three names given by Dr. Selders on his application as sponsors were: Dr. Walter E. Lee, a Dr. Moore in Texas, and some Senator's name that I don't remember.

I identify a carbon copy of a letter dated January 12, 1938, to Dr. John D. Moore, Hugo, Oklahoma, from Fred R. Sanderson, M. D., Def. Ex. 54, and a letter dated December 16, 1937, to Dr. Frederick Sanderson from Dr. Walter Estell Lee, Def. Ex. 44, as being before our committee on credentials.

Def. Ex. 44 was received in evidence and read to the jury, as follows:

"In reply to your inquiry about Dr. Raymond E. Selders, he is a mature man and has had a very varied experience. He is an accomplished musician, a graduate in civil engineering and several other professions, and he studied medicine quite late in life. While in the southwest he practiced medicine and surgery and then finally entered the Graduate School of the University of Pennsylvania two years ago, spending one year in the basic science course in Philadelphia, and one year in clinical work at Worcester, Massachusetts. At Worcester they apparently gave him unusual opportunities, far beyond what we considered his training warranted. However, he seemed to get away with it, and the last I heard of him was the fact that he had made application for this position of surgeon to the Home Owners Loan Medical Service.

"I do not know just what he is aspiring to in Washington and I hope this outline that I have given will answer your purpose:

"Very truly yours, Walter Estell Lee."

Def. Ex. 54 was received in evidence and read to the jury, as follows:

"January 12, 1938.

Dr. John D. Moore,
Hugo, Oklahoma.

DEAR DR. MOORE:

On December 6, 1937, last I wrote you requesting some information concerning the surgical training and ability of Dr. Raymond Selders, Houston, Texas, who has applied for hospital privileges in several Washington hospitals. As yet I have had no reply from you and would appreciate it very much if you would kindly forward me the information I ask.

Very truly yours, Fred R. Sanderson, M.D."

Fred is the first name of Dr. Fishback of the Washington Academy of Surgery, and I think that his signature is on Gov. Ex. 446-A and "Dear John" refers to Dr. John Lyons, the chairman.

The last paragraph of Gov. Ex. 446-A was read to the jury by Mr. Leahy, as follows:

"I am anxious to talk to you before you reach any decision on Dr. Selders, especially if there is feeling that he will be disapproved purely because of his connection here in Washington. As a matter of policy and tact, and I believe for the good of general public attitude toward the profession, the question of his relationship to the Group Health Association, Inc., should not be permitted to enter the discussion."

In passing upon the qualifications of Dr. Selders for hospital privileges the credentials committee of the Academy depended entirely upon the qualifications of the man to do general surgery, in making its final judgment. In disapproving the qualifications of Dr. Selders the Group Health situation was purposely kept out of the whole question, and I was willing to divorce any such thought out of my mind in passing on a man's qualifications to do general surgery.

The contents of Dr. Lee's letter were considered by the credentials committee. We doctors at that committee meeting talked very plainly, as we sensed our responsibility rather keenly, and we felt, to put it in common language that a letter submitted to us as the only written evidence that we had to go on other than that submitted by Dr. Selders

himself really damned him with faint praise. That is my interpretation of the Dr. Lee letter. The committee's action was unanimous against giving Dr. Selders general surgical privileges.

Cross examination.

By Mr. Lewin:

I was appointed in 1936 to the Executive Committee of the Medical Society and remained through 1938. I attended a great many meetings of the Executive Committee, in fact most of them, and I was familiar with most of the actions of the Executive Committee. On September 27 both the Medical Society and I took the position that Group Health was unethical and was violating the principles of medical ethics of the AMA. Drs. Lyons, Sanderson, Putzki, and Riddick were members of the Medical Society.

In passing on the application of Dr. Selders we did not follow the motion of Dr. Sager passed at the December 10, 1937, meeting of the Council of the Washington Academy of Surgery (Gov. Ex. 444-A), which states that in passing on requests for hospital privileges the committee should consider the ethics of the applicant as well as his strictly surgical training and experience. That particular resolution was brought to my attention this way: At the scientific meetings of the Academy, which are held four times a year, after scientific meeting we have a business session and take up various matters of interest in a business way. It is my recollection that Dr. Fishback brought up the question of Group Health at that time, and then Dr. Sager, in accordance with the statement in those minutes, passed or offered a resolution that the credentials committee of the Academy in passing upon the qualifications of surgeons should consider their ethical standing in any organization as well as their professional ability to do general surgery.

Now, that occurred in the early part of December. The meeting of our committee in which we passed upon this Dr. Selders occurred in January, but, in accordance with my former statement, we divorced everything in passing judgment on this man, and at the same time passed the same judgment on five other men not associated with Group Health, adversely. So far as I know, Dr. Sager's resolution was passed during a discussion of Group Health.

We have always regarded the ethics of the American Medical Association as our background and by-laws, but in passing upon men to do general surgery we had to go a step further, and that was to ascertain whether they were safe to operate on the public. My recollection is definitely and honestly that I—and I am sure the committee did—passed entirely on this man's qualifications as a surgeon. At the last meeting I attended, because then I became president and automatically left the committee on credentials, my memory is that we had one application blank on which appeared the three names I gave, and that's the only one I know of. I don't remember the hospital, but my feeling is it was Garfield, but I'm not sure. It has been our custom since the committee was formed simply to take the evidence submitted by the applicant. Dr. Sanderson investigated these names, and we had before us just one letter from Walter Lee and Dr. Sanderson's second letter to Dr. Moore, together with the application blank. As the committee is composed of five surgeons, fairly busy men, who get no compensation, we don't go beyond our immediate meeting and did not go to the Worcester City Hospital or Houston or any of the places mentioned in Dr. Selder's application to investigate it. We members of the committee expected to be supplied with the material, and then we will investigate it, but we have never, as a matter of custom, ever gone outside of our own committee.

The committee represents a group of hospitals. It doesn't represent one hospital. And I think that does away with the possibility of possible bias; for we are trying to make it as standard as possible, as a matter of fairness and protection to the public and ourselves. We doctors circulate in every operating room in this city, and for that reason we rather feel that we honestly have an opportunity to know as much as possible; but here we were dealing with a stranger, a man who was not a Washington man at all, so our problem was much more difficult. We didn't get any response from Dr. Moore after two attempts.

Q. Well, now, let me see that letter that you read in evidence a moment ago, will you? The one to Dr. Moore. Let me show you Dr. Lyon's letter to the Secretary. Doesn't Def. Ex. 54 show that he wrote to Dr. John D. Moore at Hugo, Oklahoma?

A. Well, that is what that letter says.

Q. Well, now, if he wrote to Dr. John D. Moore at Hugo, Oklahoma, and doesn't it also appear upon Def. Ex. 54, which was just read to the jury, "Dr. John D. Moore," of Hugo, Oklahoma?

A. Yes, sir.

Q. Well, now, if that is where the letter went, don't you think that might account for the fact that you didn't get an answer from Dr. Moore?

A. I think that might.

Mr. Leahy: Are you sure you are showing him the right application? See if there is not another application with "John D. Moore" of Hugo, Oklahoma on it.

Mr. Richardson: In your files. See if you have not got one there.

Mr. Lewin: I have got the Garfield one which he says was before him.

Mr. Richardson: But you have an application there which says "John D. Moore."

Mr. Kelleher: Will you tell us which one it is?

Mr. Lewin: Will you tell us which one it is?

Mr. Richardson: One of the hospitals.

Mr. Kelleher: We don't know.

Mr. Richardson: All of the applications.

By Mr. Lewin:

Q. This Garfield application shows "John T. Moore" of Houston, Texas, doesn't it, past president of the Medical Association of Texas?

A. John——

Q. —T. Moore.

A. Is that "T"? Yes. "John T. Moore, past president."

Q. "Houston, Texas"?

A. Yes.

Q. This application of George Washington shows "Dr. John T. Moore, past president, Texas State Medical Association, of Houston, Texas," doesn't it?

A. That is right.

Q. What?

A. That is right.

Q. It also shows "Dr. George MacIver of the Worcester City Hospital." Did that come to your attention?

A. No, sir.

Q. At any time?

A. I never heard of that.

Q. Weren't you on the staff of George Washington yourself?

A. Yes, sir.

Q. You never saw this application?

A. No, sir.

Q. Of Dr. Selders?

A. I am not on the executive staff.

Q. Didn't his Garfield application show that he had been a resident in surgery at the Worcester City Hospital?

A. Yes, sir.

Q. But did you write to the Worcester City Hospital or to the superintendent of it?

A. I didn't write to anyone. I thought I made that quite clear.

Q. Did Sanderson?

A. Dr. Sanderson—

Q. Did Sanderson?

A. Well, I am sure I don't know, but I am sure my memory is that the only written documentary evidence that he produced that we passed judgment on were the written statements that I have stated before.

Q. All right. Now, here is Dr. Selders' application to Georgetown University Hospital, and I believe your committee passed on that application, didn't it?

A. Well, the only one that I personally have any recollection of was the one that gave those three names. Now, they may have all been similar, so far as I know.

Q. Well, yes. I wonder if this does not refresh your recollection that here Dr. John T. Moore, past president of Texas State Medical Association, Houston, Texas, is given; the same Dr. Walter E. Lee of Philadelphia; Dr. MacIver, the superintendent of the Worcester City Hospital; Dr. C. J. Burn, the senior surgeon at Worcester City Hospital?

A. I never heard of those last two doctors.

Q. And you don't remember that Dr. Sanderson could give any report on what they said about Dr. Selders?

A. I am sure that Dr. Sanderson, as far as my memory goes, and it's pretty good—I think that those are the only written documents at that time that we had before us.

Mr. Lewin: Now, gentlemen, have you found the one of Dr. Moore of Hugo?

Mr. Burke: The one that has Senator Josh Lee's name on.

Mr. Lewin: Let us give it to the jury. There is a "Josh." That is the Garfield.

Redirect examination:

At the time we passed on Dr. Selders' qualifications, as a matter of fact, we passed on the qualifications of at least 60 or 70 doctors, but we refused privileges or recommended the refusal of privileges of five besides Dr. Selders, making a total of six at that particular meeting. At least four of the disapproved doctors were members of the Medical Society. The fact that the members of our committee were members of the District Society was not even thought of by the committee in passing upon applications.

I now have a letter of transmittal requesting a report on the qualifications of Dr. Selders, enclosing a copy of his application to Columbia Hospital for Women. The letter is dated November 26, 1937, marked Def. Ex. 55. The copy of the application of Dr. Selders to Columbia Hospital for Women is dated November 10, 1937, marked Def. Ex. 56.

Def. Ex. 55 was received in evidence and read to the jury, as follows:

"Washington Academy of Surgery, Care of Dr. H. H. Kerr,
1744 N. St., N. W. .

GENTLEMEN:

I am directed by the Medical Board of this hospital to request your cooperation and advice, as proffered some time ago, in the matter of an application for courtesy privileges in major gynecological surgery and operative obstetrics.

Dr. Raymond E. Selders, an employee of the medical cooperative or insurance organization recently formed by employees of the Home Owners Loan Corporation, is applying for such privileges and, as you can see by the enclosed copy of his application, he has not presented evidence of the high degree of training and large experience in gynecology and obstetrics which this hospital has usually demanded of those seeking privileges in Classes 1 and 2, although he may have had both.

Because of the peculiar circumstances of this case and the Medical Board's desire to act in a fair and judicial manner, your advice will be greatly appreciated.

Very truly yours, P. M. Ashburn, M. D., Secretary of the Medical Board."

Def. Ex. 56 was received in evidence and read from to the jury as follows:

"Give name of Medical Board or Courtesy Staff physician for reference.

"Walter E. Lee, M. D., Surgeon—Philadelphia. John D. Moore, Past President, Medical Association of Texas."

I got the address of John D. Moore as being Hugo, Oklahoma, from Dr. Sanderson.

Recross-examination:

Q. Doctor, when you were on the stand before, you testified that you and your committee of the Washington Academy had before you the application of Dr. Selders to Garfield Hospital.

A. I testified to the best of my memory that; I was not sure.

Q. What is your testimony now that you have the application to Garfield Hospital before you?

A. The day I testified?

Q. No. When you were passing on the qualifications of Dr. Selders.

A. I think the record will bear me out that I stated that I did not know what—

Mr. Lewin: I move that that be stricken.

Q. I want an answer to my question, Dr. Borden. Did you have the application of Dr. Selders to Garfield before you when your committee passed upon his qualifications?

A. My recollection now is certain about it since I have this. This is the one we had (indicating Def. Ex. 56).

Q. Did you have the application to Garfield before you at any time while you were passing on Dr. Selders' application?

A. Not at the last meeting I did not have.

Q. Did you have it in any of the meetings that you attended?

A. Not to my knowledge.

Q. Would you deny that you had the application that Dr. Selders sent to Garfield and to Georgetown, Providence, and George Washington at any time while you were deliberating upon his qualifications?

A. I would not deny or affirm anything, because it did not come to mind. But it is my impression that we passed on the application that I brought in this morning (Def. Ex. 56), and that any future correspondence with other hospitals involved was the result of the action we took on this.

Q. So your best recollection would be that this was the first one that you had, and then as the later ones came in you gave them the answer which had resulted from your investigation of this one. Is that it?

A. I am in no position to say, because I was not chairman of the board. I can only say that we took action on that application, and that all future applications went through the chairman of the board.

Q. Is it not true, however, that after you considered this application you later got applications from Garfield, Georgetown, Providence and George Washington University hospitals?

Mr. Leahy: Do you mean him, personally?

Mr. Lewin: I mean, his committee.

A. I explained to you the last meeting I attended, because I became president in January, and I saw no other application after that date.

By Mr. Lewin:

Q. Did you participate in the decision upon which Dr. Fishback's letter of January 31 was based, to Garfield?

A. The only letter that I remember from Dr. Fishback was the one we discussed the last time.

Q. It is in evidence that Dr. Fishback wrote Garfield Hospital on January 31 giving the Washington Academy's conclusion as to Dr. Selders' qualifications to that hospital. Did you participate in the deliberations of the committee that led up to the sending of that letter?

A. Dr. Fishback was the secretary of the Academy.

Q. Dr. Borden, I would like to have an answer to my question. Did you participate in the deliberations of the committee that led up to the letter which Dr. Fishback sent to Garfield Hospital?

A. To my knowledge, I had no thought about the matter at all.

Q. You do not remember; is that your answer?

A. Well, I have got a pretty good memory, but I do not think, beyond passing on the applications we had, so far as I was concerned with them in every committee meeting as long as I was on the committee—

The Court: We do not want to go into another cross-examination of this witness except on the testimony of this morning.

Mr. Lewin: I am confining it to that, I think, your Honor.

By Mr. Lewin:

Q. Is not Def. Ex. 56 a copy of a document prepared at Columbia Hospital?

A. Yes, sir.

Q. It is not a document prepared by Dr. Selders, is it?

A. No, sir.

Q. It is only a copy, is it not?

A. Yes.

Q. Do you know where the original is?

A. I suppose it is at Columbia Hospital.

Q. Do you know who prepared it?

A. Who prepared the copy?

Q. Yes.

A. Whoever wrote that letter. It came with the accompanying letter.

Q. It is true that Hugo, Oklahoma, does not appear on here, is it not?

A. There is no address on there at all; just the doctor's name.

Q. But it does appear on there that he, Moore, was Past President of the Association of Texas, does it not?

A. Yes, sir.

Q. And the letters which Dr. Sanderson sent to this Dr. Moore were sent to Hugo, Oklahoma, is not that correct?

A. Yes.

Q. And you did not receive any reply?

A. Dr. Sanderson did not; no.

Q. And the committee did not?

A. No.

HENRY B. BLAIR, a Witness for the Defendants.

Direction examination.

By Mr. Leahy:

I reside in Washington. I am a member of the bar of this Court, of the Court of Appeals, and of the Supreme Court of the United States. I have been a member of the bar of this Court since 1892. I was one of the incorporators of the Episcopal Eye, Ear, Nose and Throat Hospital in 1897 and have been connected with that institution since. I was its first vice-president, which is the active member of the hospital from the executive side; the Bishop of the Diocese being, ex officio, the president, and I was also chairman of its executive committee. In 1937 and 1938 I was on the executive committee and one of the directors at Columbia Hospital.

In the Episcopal Hospital the governing body is the board of governors, which meets three times a year. The active body is the executive committee, which is appointed by the board of governors.

In Columbia Hospital the setup is somewhat the same, except that the board is called directors and meet four times a year, and the executive committee meets monthly.

The Episcopal Hospital is a special hospital, as its name implies, and Columbia is a special hospital for lying-in and diseases of women. Episcopal has an attending staff and a courtesy staff. The medical staff makes recommendations annually to the board of governors, and the board of governors approves those recommendations unless there is some question raised in regard to them. In other words, it is a requisite at the Episcopal Hospital that one must belong either to the attending or courtesy staff before he can practice his profession there, and that rule has existed during the existence of the hospital. During the years 1937 and 1938 I did not understand that there was any by-law in Episcopal Hospital requiring membership in the local Medical Society as a prerequisite to practicing in the hospital.

I know Dr. Dabney. In 1937 and 1938 he was continuously one of the chief surgeons during that time, which means that he was a chief of staff, one of 12. I have no knowledge of any rule or regulation of Episcopal against Group Health patients coming into the hospital. There was

no rule at the hospital that made it necessary for Dr. Dabney to bring Group Health patients through the back door of the hospital.

In 1937 and 1938 I am sure that Columbia Hospital did not put into effect any rule requiring membership in the local Medical Society as a prerequisite to the enjoyment of hospital privileges. I do not recall that any rule or regulation was put into effect at Columbia Hospital against Group Health. I do not know whether there were any members on the staffs at Episcopal and Columbia Hospitals in 1937 and 1938 who were not members of the District Society. I think not; but I do not know.

Cross-examination.

By Mr. Lewin:

I have none of the by-laws with me, as we furnished everything we had to the Government. The medical staff at Episcopal has its own by-laws.

I was chairman of the executive committee of Episcopal Hospital in September, 1938. The statement in the minutes of the executive committee of September 20, 1937, that "The chairman informed the committee that he had received during the summer several communications regarding Group Health Association and that we would go along on the present basis until the matter had been finally adjusted between the doctors and Group Health Association," is substantially my statement, but in the language of the secretary pro tem. the word "doctors" in that phrase, "adjusted between the doctors and Group Health Association," means our own doctors at Episcopal.

My information is that the by-law of the Medical Staff relating to confining the courtesy list to members of the local Society was not a requirement in 1937 and 1938, and I can't furnish you with the by-laws because I have furnished you with everything that we have. The subpoena did not call for these by-laws.

CHARLES D. DRAYTON, a Witness for the Defendants.

Direct Examination.

By Mr. Leahy:

I am a member of the bar of this Court and have been a member for about 35 years, as well as a member of the

Court of Appeals and the Supreme Court of the United States. I am a member of the Board of Education of the District of Columbia. I have been a director of Children's Hospital for ten years and president of the board of that hospital for six years.

The board of directors holds monthly meetings and examines questions of general policy and are the final administrative board of the hospital. There are six on the board. Children's Hospital is incorporated under an Act of Congress 70 years ago for the purpose of caring for indigent children under the age of 12 years. It now does 85 percent charity or part-charity work and was originally incorporated entirely as a charitable institution. The hospital now has 27 private rooms, from which they derive some revenue, and of course our support is largely dependent upon our appeal to the public. That is, if we do a good job the public supports us for these charity patients.

The Community Chest now buys services from the private hospitals, including Children's through the Health Security Administration, and they pay for it at less than our cost, and they don't always pay for all the services they contract for.

Children's Hospital has a medical staff composed of some of the leading doctors in Washington, the chief of whom is Dr. Joseph F. Wall, a leading pediatrician or child specialist. From the first of February, 1937, we had a so-called courtesy staff or list, which assumes no obligation to attend the little patients in the hospital whose parents cannot pay for them. They merely bring their own patients into the private rooms.

For a great many years we had a prerequisite for admission to the general staff of the hospital that members must be members of the local Medical Society or ethical society, as it is referred to, and that same rule naturally applied when the courtesy staff came into being in February, 1937. About 139 are on the courtesy staff, and 154 on the consulting medical staff, including house doctors and internes. All during 1937 and 1938 it was a prerequisite to membership on the courtesy staff that the applicant be a member of the local Medical Society. While the rule was in being and in effect, it was not written up until October, 1937.

The matter of the application of Dr. Selders was brought up by the Medical Staff at a board meeting. In the correspondence between the hospital and Mr. Penniman, of Group Health, Mr. Penniman was advised on November 15, 1937, that Children's Hospital will accept for treatment or hospitalization any patient in need of care, under its rules and regulations, and that all doctors treating those patients while in the hospital must have staff appointments and be members of the local Medical Society. There was no discussion in the board of directors at the time indicative at all of opposition to Group Health.

Correspondence concerning Dr. Selders' application was resumed in the summer of 1938 when I was in Maine, and there was some delay in responding to the letters because of that fact and also because of the fact that our board doesn't meet in August and September. I do not have copies of these letters, as the Government has stripped our files and has not returned them.

Q. I will show you some letters which have been introduced in evidence, Mr. Drayton. First, I will show you what has hitherto been introduced for the prosecution as Government's exhibit 378—it is Mr. Kirkpatrick to Charles Drayton, dated August 6, 1938. Another, No. 379, from Mr. Kirkpatrick to you, dated September 16, 1938; your letter dated September 19, 1938, to Mr. Kirkpatrick, which has been identified and offered in evidence as Government exhibit 380; and also Government exhibit 381, which is a letter dated November 2, 1938, from you to Mr. Kirkpatrick.

Could you, Mr. Drayton, just quickly glance over, beginning with 378, and see if you can refresh your recollection to advise us whether you personally conducted that correspondence, and what it is about?

A. Well, this is one of August 6, 1938, from Mr. Kirkpatrick to me, thanking me for a letter I wrote him on August 4, in which he says something about taking up with the board of trustees at its next meeting the question of Dr. Selders' admission to the courtesy staff.

The next letter, of September 16, that was simply a tracer from Mr. Kirkpatrick.

Then I told him on September 19, I had overlooked the fact that we had no September meeting of the board, but

that just as soon as the matter could be given consideration I would further advise him; and then the last one here seems to be my letter to him of November 2nd, in which I stated that in view of the proceedings now under way involving Group Health Association it didn't seem possible for us to give any final answer on any aspect of the controversy. Further, that he had theretofore been furnished with a copy of the memorandum of April 1, 1938, embodying the rule promulgated by our medical staff and adopted by our board governing admission to the hospital where an emergency exists, and also the attendance upon such children of members of your staff; and I enclosed another copy of that memorandum.

Q. Do you recall whether the memorandum of April 1st, to which you referred, permitted physicians to treat children in Children's Hospital in emergency cases?

A. It did, and that always has been our rule.

Q. Do you recall whether there was any further correspondence after November 2, 1938, Mr. Drayton?

A. I don't think there was any more, but I am not certain about that; my memory isn't so good.

Q. At least you haven't been able to locate any copies of other correspondence?

A. My attention has not been called to any later letter.

Q. Was it your practice to attend regularly the meetings of the board?

A. Yes.

Q. Do you recall whether at any time there was any action taken by the board with reference to any of this correspondence, which was directed to G.H.A., to restrain it in any way?

A. No, we didn't care anything about G.H.A. We were trying to do the best we could for the hospital.

Cross-examination by Mr. Lewin.

By Mr. Lewin:

Q. Mr. Drayton, you just read from a copy of a letter dated November 15, 1937. Now, as a matter of fact, that letter was never sent, was it?

A. So far as I know it was; I have no other information.

Q. There is in evidence this letter, Government's Exhibit 359, dated November 16, 1937, from the superin-

tendent, Miss Gibson, to Mr. Penniman, and the testimony here is that this is the letter which was received.

A. Well, I don't know; that may be so.

Q. It differs from the letter you read in this: the letter you read contained this statement:

"All doctors treating these patients while in the hospital must have staff appointments and be members of local medical societies,"

whereas that statement is omitted in the letter Miss Gibson sent to Mr. Penniman. Now, isn't it true that was omitted at your direction?

A. Not at all; I had no knowledge of it until this moment, that it had been omitted.

Q. But it seems perfectly clear that another letter was substituted for the one of November 15th?

A. It so appears.

Q. Do you know why?

A. Not at all.

Q. You attended, did you not, the meeting of the members and incorporators of Children's Hospital held on December 6, 1937?

A. I guess so.

Q. That was just about three weeks after the letter I showed you was sent by Miss Gibson, was it not?

A. Yes.

Q. Don't you find there that on December 6, this occurred:

"Only physicians, surgeons, and dentists who are licensees of the District of Columbia and also members of the District Medical Society or ethical body in their locality shall be eligible for appointment to the Medical Staff.

"Physicians, surgeons, and dentists not officially connected with the hospital, but members of their ethical medical societies, may be accorded the privilege of using the facilities of the hospital as a matter of courtesy for a term that shall continue during the pleasure of the board of directors, those accepting such privileges to be known as the courtesy staff;"

and some more which I don't believe is particularly pertinent?

A. That seems to be what this shows.

Q. So, some three weeks after this letter was written, you amended your by-laws for the first time requiring

membership in the District Medical Society as a condition to the appointment to your courtesy staff?

A. That appears to be so, but that has been the practice for many years.

Q. You had only had a courtesy staff for less than a year, had you not?

A. I correctly stated that in my direct, but said that it applied to the medical staff for many years and, thereafter, applied to the courtesy staff when it was formed in 1937.

Q. You say it applied to the medical staff for many years, but you say it was the custom to apply it to the courtesy staff from February, 1937, on?

A. Yes.

Q. But you had no such regulation during all those years.

A. The courtesy staff was not in existence until early in 1937.

Q. You had no such regulation until December 6, 1937.

A. Not any written regulation.

Q. Is it not true that the reason you made this change on December 6, 1937, was that you had just received, five days previously, a letter from Dr. Conklin of the District Medical Society, enclosing a resolution of December 1st, of that Medical Society, stating that as a matter of educational policy the hospitals should adopt a rule confining their entire staffs to members of the District Medical Society, or other local societies of the A. M. A.?

A. That had been the custom so long that we were simply following it in putting it in writing.

Q. Didn't you put it in writing on December 6, 1937, as a result of the receipt of this communication from the Medical Society of the District of Columbia?

A. I say "No," not as a result of it. It may have called our attention to the fact that the practice that we had been carrying out for many years had not been in writing, and resulted in that being done.

Q. Will you look at this list of members of the outpatient department of Children's which was obtained, I believe, from your hospital, and tell me—this is September, 1938—whether all those doctors are members of the District Medical Society?

A. I couldn't tell you; I don't know.

Q. Now, as a matter of fact, do you know whether Dr. Sigmund Newman, of Virginia, was a member of the District Medical Society or not?

A. He may be a member of the Virginia society, which would be recognized as of the same ethical standard.

Q. Do you know whether he is a member of that society?

A. No.

Q. Do you know whether Dr. Stephen Verges is?

A. I don't know. There is no use going through all those and asking me about them, because I don't know.

Q. As far as you know, there may be a number of them who are not?

A. As far as I know there may be anything about it that I don't know.

Q. Did the minutes of your meeting of the medical staff of Children's Hospital for April 4th (Gov. Ex. 523) come to your attention?

A. Let me have a look at it. No, I will say this generally. We don't see the minutes of the medical staff.

Q. This didn't come to your attention?

A. No.

Q. And you weren't aware of this action that I am pointing out to you there?

A. No, I have no knowledge of this, but I did write the letter to Senator Capper.

Q. Now, when was Group Health Association or Dr. Selders notified that his application had been rejected at the Children's Hospital?

A. I don't know, Mr. Lewin.

Q. As a matter of fact, do you know whether he was ever notified?

A. I don't know whether he was definitely notified or not.

Q. Apparently we have no letter of such notification. I wondered if you ever saw one.

A. No, I have never seen one. I don't believe there was any such letter, after mine of November 2, 1938.

Q. I am speaking now the fall of 1937, or the early part of 1938.

A. I doubt he was definitely notified, but I am not familiar with anything to the contrary.

Q. Did you understand that his application was definitely rejected in the fall of 1937, or the early part of 1938?

A. Well, if you want me—I think it was rejected by the committee of the medical staff, which passes on those applications, but I am not certain.

Q. Don't the board of directors pass finally on those applications?

A. Well, yes, it is submitted by the staff, but as your Dr. Cabot stated we rely and must rely on the medical staff.

Q. Do you remember them making a recommendation to you in the latter part of 1937, or early part of 1938, that Dr. Selders' application should be rejected?

A. I really don't; my memory is bad, and there has been a lot of things since that time; it may have been done.

Q. You don't remember receiving a letter from Mr. Kirkpatrick, calling your attention to Judge Bailey's decision with reference to Group Health (Gov. Ex. 376); that was written July 28, 1938?

A. Yes, I guess so; it brings it back to me now.

Q. Isn't it true that was forwarded to you at your summer home in Massachusetts?

A. Yes.

Q. And you remember that you replied to Mr. Kirkpatrick August 4. I wonder if this would refresh your recollection as to whether he had been rejected before that time. Don't you say:

"As soon as our board meets in September I shall take up the question as to what position we should now take respecting Group Health Association, Inc. and advise you on behalf of Children's Hospital. Since the matter is one of great importance and since our position heretofore has resulted from formal action taken by our board, you will understand that I am not able now to announce any change."

A. That action by the board may have been of a general nature. I am not sure it was directed to Dr. Selders' application, because the general rule that had always been in effect may have been what I referred to.

Q. Your impression is that the action of the board requiring membership in the local society was taken with respect to G. H. A.?

A. I didn't say with respect to G. H. A.; I meant in applying the rule that our staff should be recruited from the Medical Society generally.

Q. When you say, "our position heretofore has resulted from formal action taken by our board," weren't you talking with respect to the action taken by the board in regard to Group Health, which you mentioned in the sentence just before that?

A. It may have been that; it may have been the general rule or it may have been some specific objection to Dr. Selders' application.

Q. In any event, what you told Mr. Kirkpatrick was that you would take up the question of your position as regards Group Health in the fall of 1938, and not as regards Dr. Selders.

A. That may be and then subsequently I found we didn't have a meeting in September.

Q. And when you said the matter is "one of great importance," weren't you referring to your decision with regard to Group Health?

A. Oh, the whole problem of Group Health; that is true.

Q. Then, I believe it is true, isn't it, that you wrote Mr. Kirkpatrick and told him you would take the matter up with the board at its meeting in September, and then, in September, after receiving another letter from Mr. Kirkpatrick, you told him you were under a misapprehension, that the board had not met in September,—and then you say your letter of November 2nd, 1938, is the last communication on the subject; is that right?

A. The last I know about.

Q. And that was just about a year after Dr. Selders had applied for privileges?

A. Yes, he had correspondence—Mr. Kirkpatrick with Miss Gibson, and she had given him what we regarded as some definite answer.

Q. That is what I was looking for. Can you give any definite answer?

A. I mean in advising him that in order to practice in the hospital he would have to be a member of the staff, and then placing back of that the thought that members of the staff must be members of the local medical society. That would seem to have been somewhat of an answer—not as direct and definite, perhaps, as you would like, but an answer.

Q. Did you know at the time that Dr. Selders himself was a member of the Harris County Medical Society, a constituent society or component body of the A. M. A.?

A. I don't know whether I heard that since or before.

Q. Did his application show that to you?

A. I never saw his application because, as I say, we leave that to the medical staff to pass on.

Q. Would that have brought him under the operation of this rule which you adopted in the early part of December, 1937?

A. Oh, you mean the rule concerning membership in the local society or ethical body?

Q. Yes. Would that have brought him under that rule?

A. That fact alone, if he had been in good standing and recognized as qualified to do the things that he claimed able to do, and made application to do, I would say yes.

Q. Well, do you know whether he was, or not?

A. Whether he was qualified or not?

Q. Yes.

A. I know that the medical staff didn't think so and they made inquiries concerning him, and rejected him for that specific reason.

Q. Do you know what inquiries the medical staff made?

A. They inquired of the College of Surgeons.

Q. You mean the Washington Academy of Surgery?

A. Yes.

Q. Did they refer his application to the Washington Academy?

A. They asked it concerning this man's qualifications; his application having been for all sorts of surgery at Children's Hospital.

Q. Did Dr. Selders give you some references?

A. Probably so.

Q. Did you write to his references?

A. I presume so and I am aware of one letter written to the Worcester Hospital, of which I have been told.

Q. That was written by your medical staff?

A. Yes, Dr. Titus wrote the letter and had a reply. He is a member of our staff.

Q. And he wrote it in his capacity as a member of your staff?

A. I don't know in what capacity he wrote it, but he wrote a letter and the report was adverse on Dr. Selders.

Q. I wonder if we might have that letter.

A. Well, you will have to get it from Dr. Titus. I haven't it. I am trying to answer your questions as best I can. I am not submitting that letter, because I haven't got it.

Q. Are you positive that you saw it in the files of the Children's Hospital in response to a letter from your staff making inquiry on the subject?

Mr. Leahy: He didn't say that.

The Witness: I didn't say I saw it in response to a letter of our staff. I said I had been told such inquiry had been made.

Q. You don't know whether your staff or any member representing it communicated with any of Dr. Selders' references?

Mr. Richardson: He said he did know. He said Dr. Titus did and that Dr. Titus was on their staff.

The Court: He very carefully told you he didn't personally know what went on; that the medical staff took care of those matters, and then you asked him if he heard concerning it, and he answered that question.

By Mr. Lewin:

Q. Well, I will see if I can make this clear: Do I understand that in the files of the Children's Hospital you have at any time had a letter from Dr. Selders' references?

A. I haven't examined that file; in fact, it was taken over by the Government.

Q. Did you respond to the subpoena?

A. Yes.

Q. Did you produce any such letter?

A. I wasn't asked for any such letter.

Q. Well, such files were not taken over by the Government.

A. There was some indication later that a great many of the letters were taken.

Q. Do you know, as a matter of fact, that the Government has received any such letter as you describe?

A. No, I said I hadn't seen any such letter.

Redirect examination.

At the time I wrote the letter of November 2, 1938 (Gov. Ex. 381) the whole atmosphere was charged with doubt about the legal status of Group Health, as witness the Corporation Counsel's opinion. Judge Bailey's decision was in August, 1938, and favorable to Group Health, after they had changed the by-laws, and so on; and then there was a possibility—in fact, it was understood—that further action was being taken to determine this question, or might be taken. The whole thing was in doubt, in view of the pend-

ency of these several matters in the court, or in legal channels. We felt that we were not in a position then to do business with a group whose legal status was in doubt.

SAMUEL H. ROGERS, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I am president of the board of directors of Casualty Hospital. I recall a meeting in 1938 with Mr. Loomis and Mr. Kirkpatrick. In fact, we had two meetings.

At a meeting at which Mr. Loomis and Mr. Kirkpatrick were present the proposition was made that they take over a wing or bay of the Casualty Hospital, and at that time either Mr. Kirkpatrick or Mr. Loomis pointed out it would be an excellent time for us to get some favorable publicity by joining in with Group Health, who had been favored with a great deal of publicity and was being favored with a great deal of publicity at that time. It was brought to our attention that they had excellent publicity and I couldn't recall the words exactly, but it amounted to the same thing; that they had a very excellent publicity man. They told us that high officials of the Government were very much interested in this movement and the members of Congress were interested in it; they didn't mention who or how many. They let us know that they had the backing of Government officials and at least some members of Congress. They made a proposition that they might lease a wing of the hospital, as they previously had representatives go through the hospital, and it happened that at that time we were not crowded. I told them that we were organized for a definite purpose and that that plan didn't fit in with the definite purpose. Our purpose was to maintain an institution for furnishing emergency medical and surgical service and hospitalization to all, regardless of race, color, religion, or ability to pay. They let us know that they were not interested in that part of it. They were interested in taking care of Group Health patients and having Group Health doctors attend them. At the second conference we merely told them that we didn't see how we could change our setup to suit their requirements.

DR. HENRY ROLFE BROWN, a witness for the defendants.

Direct examination.

By Mr. Leahy:

I have resided in the city of Washington for seven years. I am a retired physician. I retired in June, 1937.

I took my medical course at the University of New York and graduated in 1889. I took my internship at the Bellevue Hospital in New York and then went to San Francisco and engaged in the private practice of medicine until 1898. Then I practiced medicine in Providence, Rhode Island, until I joined the Army in 1916. I was a member of the Medical Corps then for several years and went overseas.

On my return from service overseas I went into the Veterans Administration for the purpose of operating and organizing their hospitals and clinics. I organized a Veterans Hospital in Rutland, Massachusetts, spent three or four years there. Then I was transferred to Aspinwall, Pennsylvania, opposite Pittsburgh, and stayed there for ten years. Then I came to the Veterans Administration in Washington where I was put in charge of all tuberculosis hospitals throughout the United States, where I remained until I retired in June, 1937. There are 20 tuberculosis hospitals under the direction of the Veterans Administration.

Mr. Otterman of the Home Owners Loan Corporation approached our medical director, Dr. Griffith, in the Veterans Administration and asked him if there was any member on his staff who would be interested in the Group Health venture. He contacted me, talked the matter over two or three times, laid out the plans for organizing Group Health, and I believed then, as I do now, that such a thing would be very valuable for the community, especially those in the low-income groups, and I went into it with the idea of developing it and making it a success. These conversations began in March or April of 1937. In the latter part of April definite arrangements were made for me to become the medical director of Group Health.

I first met Dr. Neill at a meeting of the executive committee of Group Health at the Medical Society Building on M Street. I again met Dr. Neill at Mr. Childress' house at a meeting which followed the meeting in the Medical

Society. On the occasion of meeting Dr. Neill at Mr. Childress' house, Mr. Childress, Mr. Penniman, Mr. Zimmerman, and Mr. Russell and myself were present. Mr. Penniman was there as president of Group Health. Mr. Zimmerman never had any position in Group Health but was the real man behind the operation of it. Mr. Russell was the legal adviser and chief counsel of the HOLC. I was at the conference that night as the medical director of Group Health, as I had already assumed office.

At that conference at Mr. Childress' house Mr. Penniman to my knowledge did not offer the position of medical director to Dr. Neill, and I was there during the entire conversation, and had already been employed as medical director.

At the meeting at the Medical Society I don't remember all those present, but I do remember Dr. Neill, Dr. Groover, and Dr. Macatee, and there were quite a few more. Mr. Zimmerman and Mr. Penniman accompanied me. We discussed the proposed meeting at the Medical Society several days before, and finally I was called on the telephone and asked to meet Mr. Penniman and Mr. Zimmerman at the Mayflower Hotel, where we would have dinner together and then proceed to the medical meeting. The meeting at the Medical Society was the first time that I had met and discussed the matter with members of the District Society. We met at the Mayflower Hotel before we went to the Medical Society building—that is, Mr. Zimmerman, Mr. Penniman, and I.

At the dinner Mr. Penniman and Mr. Zimmerman advised me that the purpose of the meeting was for the Society and Group Health to try and get together on the organization of Group Health. I then asked them, "What information are you going to give them, and how far do you want to go with them in their plans?" and the replies from both Mr. Penniman and Mr. Zimmerman were not to do any more and not to go any further than was necessary, and to tell them as little as possible.

Following the dinner we walked to the Medical Society, and just before we entered they stated, "Now don't forget, we will give them just as little as possible," or words to that effect; and at the meeting the advice which was given at dinner and just before entering was followed pretty fairly.

Arrangements were made at the first meeting to meet the board of trustees of Group Health in the HOLC assembly room at a later date. I was present on that occasion, as were almost all of the board of trustees of Group Health, and a great many of the committee from the Medical Society. That meeting was not as satisfactory as the first meeting. Dr. Groover, I think, did most of the talking and told us a great deal about the failure of such organizations in different parts of the country and abroad.

After that we did not have any formal meetings of any kind between the District Medical Society and Group Health over the period of time when I was medical director, from June 7, 1937, until the 30th of April, 1938. When I first became medical director no arrangements had been made with the hospitals in the District for the reception of patients of Group Health. Mr. Penniman and Mr. Zimmerman met with me at lunch, and it was decided that I approach the hospitals on the question of courtesy privileges for the members of our staff.

This I did. I first went to Emergency where I contacted Mr. Sandidge, who referred me to Mr. Gist Blair, whom I saw. Major Blair asked me to submit a letter requesting what our desire was. I returned to the office. In the meantime my office had been in that of Mr. Zimmerman at the HOLC building where I had my headquarters. I formulated a letter requesting privileges at Emergency Hospital, as suggested by Major Blair, and submitted it to Mr. Penniman. Mr. Penniman contacted Mr. Zimmerman, and it was decided that we would meet again the next day at luncheon.

We met the next day, and at that meeting I was advised that they would take care of the hospital situation and I need give it no further thought. Following that I had nothing whatever to do with the hospital situation.

With reference to the mail coming to Group Health, a great many of the letters were addressed to the clinic on I Street and were usually addressed to the medical director. I opened several of those letters which were directed to the medical director. Some of them were from the hospitals, which I would return to Mr. Zimmerman and Mr. Penniman. Later I was instructed not to open any mail, and to send it on unopened to them, and from the time of the second luncheon I had no authority to deal with the

hospitals at all as medical director, and it was done by Mr. Penniman.

The clinic opened on November 1, and at that time I had a staff. One of the members was Dr. Raymond E. Selders, whom I employed as a surgeon for the clinic, to do minor surgery. I did not employ him to do general surgery of all kinds, as I did not think he was competent to do general surgery, because he didn't have the training nor the qualifications. I had nothing to do with the attempt to try to get privileges to do general surgery in the Washington hospitals for Dr. Selders.

My agreement in the beginning was that I was to take complete charge of the medical direction of the clinic and of Group Health, and I accepted the position on that ground. But they didn't need a medical director there, it soon developed. They needed a rubber stamp. That was all that was required. With reference to the duties that had been assigned to me as medical director, the board of trustees took them over themselves, and most of them were taken over by Mr. Zimmerman and Mr. Penniman.

In the beginning Group Health functioned very efficiently because we didn't have so many patients. On a small staff of four or five we could handle the patients very well, but gradually they crowded in so that we couldn't give attention to the patients on account of the great number of patients with so few doctors. I had complaints from the doctors and members of the staff about that. While it depends very largely on the class of patients or conditions that one meets, an average of 20 to 25 patients a day would be a good, hard day for any doctor in a clinic like Group Health.

After the clinic opened and when the patients began coming in, the patients ran as high as 60 per day to a doctor. I do not think that a doctor can give efficient service to as many as 60 patients a day.

After that condition started, it continued as long as I was associated with the group. The agreements we doctors had with Group Health were all verbal; there was never a written contract or agreement. I employed Dr. Selders and I employed Dr. Lee. I employed Dr. Lee under a verbal contract. I employed Dr. Scandiffio. I employed him under a verbal contract.

The two proposed written contracts which were received in evidence in this case were gotten up for the sole pur-

pose of presenting them to the Medical Society. These were not in existence before the hearing of Dr. Scandiffio at the Medical Society. These papers were prepared by Mr. Neuman and Mr. York of the legal department of the HOLC.

After Dr. Lee and Dr. Scandiffio became members of that group I advised them that they should resign from the Medical Society and stated that I did not belong to the Society, and therefore they were without jurisdiction, and that I expected nothing from them. In pursuance of my advice they did resign. Later they withdrew their resignations. I attended the hearings at the Medical Society.

They told me that when they resigned they tendered to the Medical Society a letter in identical terms. Mr. York, Mr. Neuman and Mr. Russell of the legal staff of HOLC were the principal legal advisers of Group Health. Mr. York, Mr. Russell, Mr. Neuman, and Mr. Keely were all present at the trial of Dr. Scandiffio.

Mr. Penniman and Mr. Zimmerman displayed a great deal of interest in the operation and administration of the clinic, interfered quite frequently in small things, would frequently meet Dr. Selders and other members of the staff outside the clinic and discuss matters that should properly come before the medical director and through him to the trustees. There was a great deal of interference in many ways.

I selected the staff, both professional and lay, for the clinic almost entirely, with one exception, and that was Dr. Dabney, whom I contacted and was asked to present him to the board of trustees. In pursuance of a telephone call I sent Dr. Dabney to see Mr. Loomis and Mr. Russell, who employed him, so as medical director I did not arrange the employment of Dr. Dabney. Dr. Dabney was to serve upon the staff in nose and throat cases.

I know Mr. Kirkpatrick and first met him early in the organization of Group Health, and he was the second president of Group Health and was vice president under Mr. Penniman. Until he became president he didn't take much interest in the clinic. Mr. Penniman and Mr. Kirkpatrick circulated a great deal among the patients when they came to the clinic. The attitude of Mr. Penniman and Mr. Zimmerman toward the medical profession generally was not at all good. They very frequently, especially Mr. Penni-

man, presented me with everything that was against the doctor.

The witness then testified as follows, which testimony on motion of the Government was stricken from the record over the objection and exception of the defendants:

One day Mr. Penniman came in with a very scathing article from a West Coast paper regarding a patient in a hospital out there and passed it to me to read. It was a very nasty article. I read it very slowly, and after reading it I passed it to Mr. Penniman and said, "Mr. Penniman, you don't want to forget that I am a doctor, and I don't want any more such things from you."

Mr. Penniman did at that time, and on many previous occasions, hold doctors in more or less disdain and stated, "Well, they just don't amount to much," and said, "They are not up to date. They are not businesslike." They don't know how to do this, and they don't know how to do that. A lot of trivial stuff that didn't amount to anything.

When Mr. Kirkpatrick took office at Group Health there were quite a number of members of Group Health who had elected to be operated on. An elective operation is one that may be done at any time, whereas an emergency operation is one requiring immediate attention. As I recall, there were about 60 or 75 elective operations pending. Some of these operations were major operations, and I didn't want Dr. Selders to do them unless they were simple cases, and the others were those that the hospitals were not admitting, although we admitted all emergency cases to the hospitals, or those that were supposed to be emergency cases. The instructions that I received from responsible officials of Group Health with reference to dealing with these operations were to put as few in the hospital as possible because the funds were low.

While I was medical director I made an effort to replace Dr. Selders sometime in the latter part of January or early in February of 1938. I first met Dr. Selders when I contacted him through the Physicians' Exchange in Chicago, which is a sort of employment bureau for professional people, technicians and the like.

While I was at the Group Health the membership grew very rapidly. About 70 per cent of the HOLC membership joined Group Health. Then when it opened up for the other Government departments there was a great rush of ap-

plications, whereupon a great many of the HOLC men dropped out. Such a great number came from the Agricultural Department that they subsequently were so strong as to take over the management.

Q. Do you recall now, Doctor, whether Mr. Penniman, Mr. Zimmerman, and Mr. Kirkpatrick did anything toward getting new members in G.H.A.?

The question was objected to because immaterial. The objection was sustained and an exception noted. Thereupon the defendants offered to prove by the witness that there were solicitations of the employees of HOLC by the persons named in the question, in violation of the ethical standards of organized medicine, and that they then demanded that doctors employed by Group Health be permitted to be and remain members of the District Medical Society whether or not they complied with its rules and regulations, and to further prove through the witness that solicitation is what formed Group Health and that it was not a spontaneous outburst on the part of the members of HOLC, as testified to by Mr. Penniman.

The Court: I do not think we can go into that. It may not be ethical according to the ethical standards of organized medicine, but, after all, it was not illegal. It was not anything that the Court can do anything about.

Mr. Richardson: It is explained as a reason.

The Court: That may be; but I think it is quite clear—it seems to me—that even if they were not conducting it fairly according to the ethical ideas of organized medicine, that did not make them a legitimate victim of restraint.

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Q. Doctor, do you recall now the rate of dues charged when you first became medical director?

The question was objected to as irrelevant and immaterial. This objection was sustained and an exception noted.

Q. Doctor, under the schedule of dues charged by G.H.A. what, if anything, have you to say of the capacity of G.H.A. to give adequate and complete medical care?

The question was objected to as irrelevant and immaterial. The objection was sustained, and exception was noted. The defendants offered to prove the amount of dues orig-

inally charged by Group Health, that it increased these dues, and that under the dues of G.H.A. complete and adequate medical care could not be rendered, in the opinion of Dr. Brown. The Court rejected the offer and defendants excepted.

The witness then continued:

I resigned from Group Health in the latter part of March, 1938, when I was convalescing and just recovering from an illness, as on that occasion I went down to HOLC one day to talk things over, and Mr. Penniman indicated that my resignation would be accepted, in the presence of Mr. Zimmerman and Mr. Kirkpatrick.

Q. Could you tell us why you resigned?

Government objection sustained.

While I was at Group Health I never had any interference from the District Medical Society.

Cross-examination.

By Mr. Kelleher:

Q. Dr. Brown, did you not know that Dr. Tribble had refused to become a consultant for Group Health Association—

A. Dr. who?

Q. Dr. Tribble—until—

A. He was never asked by me to become a consultant.

Q. Let me finish my question, please—until G.H.A. could be organized along lines compatible with organized medicine?

A. As far as I am concerned, I never asked him to be a consultant of Group Health or anything else that I am aware of.

Q. Did you ask him for advice about Group Health Association?

A. I talked with him a great deal about Group Health and with a great many other doctors.

Q. Did he not tell you that he could not have anything to do with G.H.A. or anything else unless it met the full approval of the District Medical Society?

A. I don't recall such conversation.

Q. Did you execute an affidavit for Dr. Tribble in response to a request from him?

A. Yes, sir.

Q. I show you Exhibit No. 370 and ask you, if that is a photostatic copy of the affidavit which you executed?

A. It has my signature on it. It is.

Q. Is that your affidavit?

A. Yes.

Q. In that affidavit do you not state that Dr. Tribble had—

Mr. Leahy: Show him the affidavit.

Mr. Kelleher: I showed it to him.

Mr. Leahy: Point to what you are asking about.

By Mr. Kelleher:

Q. In that affidavit did you not state that Dr. Tribble had refused to have anything to do with G.H.A. until it was approved by the District Medical Society?

A. I don't recall it. It may be there, but I don't recall it. (After reading document referred to) Apparently that is right.

Q. Did you not also attempt to obtain the services of Dr. Cromer?

A. Dr. who?

Q. Dr. J. Keith Cromer. Do you remember Dr. Cromer?

A. No, I do not.

Q. Don't you remember talking with a gentleman in Washington by the name of Cromer concerning his coming with G. H. A.?

A. There were so many of those men that I do not really recall the names of all of them. I interviewed a great many, and the names of a great many have gone from my mind.

Q. Let me show you what purports to be a letter from Cromer to you, dated October 26, 1937, and ask you whether that refreshes your recollection as to whether you ever talked with Dr. Cromer.

A. Yes. I remember him now.

Q. You remember it now. Did you ask Dr. Cromer to come to G. H. A. on the medical staff?

A. Yes.

Q. Is Gov. Ex. 669 the reply you received from Dr. Cromer?

A. I don't quite recall. It is not very clear in my mind. It is no doubt a fact.

Q. While counsel is examining that document I will go over another matter. Did you also attempt to secure the services of Dr. C. Tiemeyer?

A. Yes.

Q. In Baltimore?

A. Yes.

Q. Did you ask him to come on the staff of G. H. A.?

A. Yes.

Q. Is this a letter which you received in reply from Dr. Tiemeyer (handing paper to the witness)?

A. Yes.

Government counsel offered Gov. Ex. 669 in evidence. Defendants objected on the ground of hearsay. Objection was overruled and exception was allowed.

Gov. Ex. 669 was received in evidence and read to the jury:

Gov. Ex. 669 is a letter from J. Keith Cromer, M. D., to Dr. Brown, dated October 16, 1937, and reads as follows:

"DEAR DR. BROWN:

Pursuant to our recent conversation, I wish to state that I would be glad to take care of the obstetrical work for your clinic on a part-time basis if and when such consultation work is recognized by the District Medical Society. I hope you understand my position in this matter.

Very truly yours, J. Keith Cromer, M. D."

Dr. Cromer was retained as a consultant and took care of quite a few obstetrical cases for Group Health on a fee-for-service basis and not on a salary basis.

Q. Dr. Brown, when you were testifying that some of the lay members of Group Health Association circulated among the patients that were attended by the doctors of G. H. A. you did not mean that there was any interference with the treatment of patients by lay members, did you?

A. I don't think that I made a statement that there was, so far as I recall.

Q. I just wanted to clarify that, that there was no interference with the treatment.

A. No, sir.

Q. At any time, to your knowledge?

A. Not that I know of.

The amount of the salaries to be paid to doctors was pre-agreed upon, and I passed upon the qualifications of the doctors coming with Group Health. My recommendations were accepted by the board of trustees, with one exception, Dr. Dabney. Dr. Dabney was employed in February or March while I was sick.

When I employed Dr. Selders I believed that he was qualified to do clinical work and medical surgery, and the other work I intended to give to consultants outside. I do not believe he was a finely-qualified doctor for general surgery. I did believe he was finely qualified for clinical work, minor surgery in the clinic.

An appendectomy is a major operation, but there are difficult appendectomies and there are very simple appendectomies, but the average appendectomy is a major operation. Dr. Selders did perform an appendectomy at Garfield Hospital, and I was with him. At the meeting of the executive committee I told the committee that I considered Dr. Selders a finely-qualified doctor, but the answer was not qualified, and I told the executive committee that he was doing appendectomies at Garfield Hospital. They were very simple cases.

Redirect examination:

When Dr. Selders did an operation at Garfield I stood right close to him as an observer. The salaries of the doctors of the staff of Group Health were a matter of discussion and agreement, and any salary over \$4,800 per year to begin with had to be taken up with the executive committee or the board of trustees, and the board determined whether to give a man more salary or not.

A great many members of Group Health resigned because they did not believe they were getting sufficient medical care, and I do not believe that any doctor can give adequate medical care to 40, 50, or 60 patients daily.

Recross-examination:

That is my signature on the bottom of Gov. Ex. 671. I am 70 years old.

MRS. BETTY LOGSDON, a Witness for the Defendants.

Direct examination.

By Mr. Leahy:

I am employed by Dr. Warfield. I have been employed by him since 1936 as secretary. I recall a question that was asked me when I was on the stand as a witness for the Government with reference to sending out the questionnaires I prepared to the hospitals, and at that time I think that I said my best recollection was that I had mailed them out; but since then I have refreshed my recollection on going back to the office and realized I had made an incorrect statement, which I wish to correct. Those questionnaires did not go to the hospitals but were mailed to the members of the hospital committee of the Medical Society, and none of them were mailed to the hospitals.

Cross-examination.

By Mr. Kelleher:

I recall that copies were sent to the members of the hospital committee, but I could not definitely say who they were at that time. On going back to the office I remembered distinctly that the questionnaires were not sent to the hospitals.

Def. Ex. 57 was received in evidence and read to the jury as follows:

"Sibley Memorial Hospital

"November 27, 1937.

"DEAR DOCTOR:

"Dr. Raymond Everett Selders has requested the privilege of treating the following in Sibley Memorial Hospital:

"Medicine, Minor & Major Surgery, Normal & Abnormal Obstetrics, Minor & Major Gynecology.

"As a member of the Advisory Committee on Medicine will you kindly indicate your approval or disapproval at the bottom of this letter and return it to the office of the President of the Hospital before Tuesday.

"Very sincerely yours, R. Lee Spire, M. D., Chairman."

"Applicant's credentials on file in the office of the President.

"Attention of the Committee is called to the fact that above applicant is one of the salaried physicians of the Home Owner's Loan Corporation Group Health Association and that information as to his qualifications and correspondence in connection with his application will be found on file in the president's office available to members of the various committees concerned for their information.

"Disapproved.

"(Signed) Thomas E. Mattingly, M. D.

"Explanation appended.

"Dr. Lewis H. Taylor, Sibley Memorial Hospital, Washington, D. C.:

"MY DEAR DOCTOR TAYLOR:

"As a member of the Medical Council, I have been asked to indicate my approval or disapproval of the application of Dr. Raymond Everett Selders for the privilege of practicing 'Medicine' in Sibley Memorial Hospital. Ordinarily I would regard it presumption to disapprove a candidate because in his application, he requested hospital privileges, other than those it is my jurisdiction to pass upon. Yet in this particular case, I cannot ignore the fact that this applicant, just ten years out of medical school, has requested, and has certified himself as eligible to receive such additional hospital privileges, that should they be granted, it will be the equivalent of the hospital board certifying him to prospective patients, as competent to practice without restraint or exception, all of the highly specialized branches of the Healing Arts, with the possible exception of psychiatry.

"Approval of this application, in its present form, would give to a stranger in our midst, privileges and sanctions not accorded to any other physician of professional eminence, practicing in our hospitals or occupying major chairs in our two, white, grade A medical schools. This rather unprecedented application for extraordinary privileges comes strangely from one whose unsurpassed erudition has not yet been recognized by honorary degrees bestowed by appreciative universities of learning, or stranger still, has not been admitted to membership in either the American College of Surgeons or the American College of Physicians.

"I did note with interest, his alleged membership in our parent body, the American Medical Association and logically assumed that he subscribes to its ideals and is obedient to its regulation and discipline. If such be the case, he will readily appreciate its injunction, making it mandatory for responsible hospital executives and hospital trustees to protect their prospective patients from the preventable hazards incident to a desultory and indifferent exercise of their appointive powers, in passing upon the qualifications of members of the visiting staff. Whereas a moderate degree of leniency and compromise is excusable, relative to their approval of general practitioners, both the American Medical Association and the American College of Surgeons most emphatically insist that the credentials of those soliciting the privilege of practicing the specialties, be thoroughly and conscientiously challenged. These credentials are challenged by responsible agencies of the organized medical profession despite the fact that the applicant may be already possessed of a mandate and authority from the state, in the form of a license, to do the very act or acts, he petitions the hospital board to approve.

"In this particular case, this applicant, like myself, is already licensed by the state to practice each and every branch of the Healing Arts for which he requests hospital privileges. So far as the state, in this instance, the Federal Government, is concerned, both the applicant and I have a legal right to practice medicine and surgery in all of its many branches, yet it is generally conceded that hospitals would be criminally derelict in their duty if they allowed their visiting staff, the comprehensive privileges sanctioned by the law. To protect the unsuspecting patient against incompetence, poor judgment, criminal negligence and rash experimentation, any or all of which might be legally defensible, the organized medical profession, acting through the appointive power of hospital boards and hospital executives, has forced high and exacting standards of internal discipline, professional competency and ethical liability upon all hospitals, without the dutiful observance of which no hospital may continue to operate with its seal of approval.

"To this end each and every applicant for hospital privileges, particularly in the specialties, must prove beyond any reasonable doubt, their indubitable fitness to receive the same. This means not only certifications of professional

competency but those qualities of character commensurate with the extent of the authority so delegated. I can hardly conceive of our Medical Council being so derelict in its duty and responsibility to prospective patients as to admit by inference, that one person can adequately qualify as internist, obstetrician, gynecologist, nose and throat specialist and general surgeon, clothing him with authority and permission to perform the most hazardous and difficult procedures of these specialties.

"It is not unreasonable to demand that the Medical Council of Sibley Memorial Hospital apply the same conscientious rules of procedure in granting these most extraordinary privileges to a stranger in our midst as were used in the case of those of us who have been under the Medical Council's direct observation for a far longer period than this applicant has been out of medical school.

"I personally shall continue to disapprove this applicant until he with some modesty and reasonableness, makes up his mind whether he desires hospital privileges as a general practitioner, nose and throat specialist, obstetrician and gynecologist, or a general surgeon. Because this applicant has reduced his own request for hospital privileges to an absurdity by the unreasonable enormity of his demands, I heartily disapprove of it and petition the Executive Committee to reject it in its entirety.

Fraternally yours, Thomas E. Mattingly, M. D."

The defendants offered the following records identified as produced as the records of the Home Owners Loan Corporation: Def. Ex. for identification No. 48, Def. Ex. for identification No. 49, Def. Ex. for identification No. 50, and Def. Ex. for identification No. 50-A, as follows:

DEFENDANTS' EXHIBIT 48

Subpoena served on the undersigned in the case of the United States vs. American Medical Association, et al., #63,221, Criminal Docket, includes:

Item 3. "All resolutions of the Board of Governors of the Federal Home Loan Bank Board pertaining in any way to Group Health Association, Inc. up to and including December 20, 1938".

Item 5. "Except from the minutes of the meeting of the Federal Home Loan Bank Board of October 1, 1936, pro-

viding for the drafting of a letter pertaining to group medical service for employees to be signed by the Chairman of the Board and sent to all employees together with a copy of the letter so drafted and sent to all employees".

This is to certify that the attached excerpt from the minutes of a meeting of the Federal Home Loan Bank Board of October 1, 1936 is the only minute entry, including resolutions, in the minutes of the Federal Home Loan Bank Board pertaining in any way to Group Health Association, Inc., up to and including December 20, 1938.

(Signed) J. Francis Moore, Secretary, Federal Home Loan Bank Board.

Mr. R. R. Zimmerman, Director of Personnel, and Mr. Luke E. Keeley, Associate General Counsel, Home Owners' Loan Corporation entered the meeting and discussed with the Board a plan for group medical service for employees of the Board and the agencies under its supervision. A committee was appointed consisting of Mr. Keeley, as Chairman, and Messrs. Loomis and Zimmerman to draft a letter on this subject for the signature of the Chairman of the Board to be sent to all employees.

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of a Meeting of the Federal Home Loan Bank Board, October 1, 1936.

(Signed) J. Francis Moore, Secretary.

January 28, 1937.

To all Employees, Federal Home Loan Bank Board, Washington, D. C.:

Arrangements have been made for a meeting of all employees of the Federal Home Loan Bank Board and its agencies at the Government Auditorium, located between the Department of Labor and Interstate Commerce Commission Buildings, on Constitution Avenue, at four o'clock Thursday afternoon, January 28. The subject of the formation of a group medical association is to be presented. It is requested that all but minimum skeleton staffs required to handle telephones, etc., attend promptly at four o'clock.

(Signed) T. D. Webb, Vice Chairman.

Subpoena served on the undersigned in the case of the United States vs. American Medical Association, et al. No. 63,221, Criminal Docket, includes:

Item 1. "Letter dated November 16, 1937 from Horace Russell, General Counsel to the Federal Home Loan Bank Board, with the notation thereon 'Approved by Board, November 19, 1937, H. R. Townsend, Assistant Secretary.'"

Item 4. "Letter dated November 16, 1937 from Horace Russell, General Counsel to Federal Home Loan Bank Board pertaining to Group Health Association, Inc., which was approved by said Board on November 19, 1937"

This is to certify that the attached letter dated November 16, 1937 which corresponds with the request under Item 1 is the only letter in the files of the Federal Home Loan Bank Board which answers the description called for under Items 1 and 4. The two items appear to be one and the same.

(Signed) J. Francis Moore, Secretary, Federal Home Loan Bank Board.

November 16, 1937.

Federal Home Loan Bank Board.

DEAR SIR:

I find that Group Health Association, Incorporated, has agreed to submit any amendment of its by-laws to the Federal Home Loan Bank Board for approval, and the attached amended by-laws are submitted for such approval.

The by-laws were amended by re-enactment in the attached form. Such amendment was necessitated to strengthen the legal position of the association. The original by-laws provided for payment of cash indemnities upon certain contingencies, such as hospitalization outside of the area of its operation, and such provision would have made it an insurance organization. These revised by-laws provide for it to secure doctors and provide hospital rooms and service for members to the extent of its available funds as limited in the by-laws, but do not provide for the payment of any cash indemnity at all. There is no change of substance but merely a change of the legal nature of the contract in this respect. The original by-laws permitted membership after separation from the Federal service. This revision excludes membership except in the case of

employees of the executive branch of the Government, excluding the Army and the Navy, and this provision is made to assure us the benefit of an exception from insurance regulations, if we are held to be an insurance company.

While there are changes at a number of places in the by-laws, all of these are intended to strengthen the legal position of the association, and none of them seem to the Board of Trustees to be of any substance. The Federal Home Loan Bank Board is requested officially to approve the revised by-laws.

Very truly yours, Horace Russell, General Counsel.

Approved by Board November 19, 1937.

(s) H. R. Townsend, Assistant Secretary.

I hereby certify that the above is a true and correct carbon copy of a letter with the original signature of H. R. Townsend thereon.

(Signed) J. Francis Moore, Secretary.

March 22, 1937.

Mr. W. F. Penniman, President Pro tempore, Group Health Association, Inc., Washington, D. C.

DEAR MR. PENNIMAN:

Pursuant to your request of even date, the Board of Directors of the Home Owners' Loan Corporation today nominated A. S. R. Wilson and W. C. Kirkpatrick to be elected as trustees of Group Health Association, Inc., and as such trustees to be members of the executive committee of said Association.

The Board of Directors deemed it unnecessary to nominate four with two to be elected.

Very truly yours, H. R. Townsend, Assistant Secretary.

HRT/EW

Group Health Association, Inc.
Washington, D. C.

March 22, 1937.

The Federal Home Loan Bank Board, New Postoffice Building, Washington, D. C.

GENTLEMEN:

In accordance with the terms of the contract by and between the Group Health Association, Inc., and the Home Owners' Loan Corporation, approved at a meeting of the Federal Home Loan Bank Board, held on March 17, 1937, it is provided, among other things, that two of the Trustees of the Group Health Association, Inc., shall be elected from nominations made by the Federal Home Loan Bank Board, who shall be members of an Executive Committee of five.

It is respectfully requested, that in compliance therewith the Federal Home Loan Bank Board furnish the Group Health Association, Inc., with the names of those it desires to be placed on the ballot. If agreeable to the Federal Home Loan Bank Board, it would be preferable to provide the names of four candidates which will be grouped separately on the ballot and instructions given to vote for two.

Very truly yours, Group Health Association, Inc.,
By (signed) W. F. Penniman, President Pro tempore.

Group Health Association, Inc.
Washington, D. C.

April 3, 1937.

To: Mr. Fred W. Catlett, Member Federal Home Loan Bank Board. From: William F. Penniman.

Pursuant to paragraph four of the agreement between the Group Health Association, Inc., and the Home Owners' Loan Corporation, we take pleasure in presenting to you herewith a copy of the by-laws of this Association, as adopted by its Board of Trustees March 22, 1937, and later amended.

It would be appreciated if the Association could receive an early reply as to whether or not these by-laws meet with

the approval of the Board of Directors of the Home Owners' Loan Corporation.

Group Health Association, Inc., By (s) Wm. F. Pen-
niman, President.

I hereby certify that the above is a true copy of a letter in the records in the Office of the Secretary, Federal Home Bank Board.

(Signed) J. Francis Moore, Secretary, Federal Home
Loan Bank Board.

Whereas, Home Owners' Loan Corporation contracted with Group Health Association, Incorporated, for certain services to be rendered as is shown by the resolution of March 17, 1937, and the contract in Minute Exhibit File No. 519,,and

Whereas, said contract requires said association to provide by-laws satisfactory to the Corporation and to provide in its by-laws for two of its directors to be elected from nominations made by the Federal Home Loan Bank Board who shall be members of an Executive Committee of five, and

Whereas, proposed by-laws have been submitted and considered, therefore:

Be It Resolved, that said by-laws submitted as shown in Minute Exhibit File No. 519 be approved subject to amendment as follows:

By striking the words "and administrative" in the first line of Section 4, of Article V, on Page 9; and

By adding to Section 1, of Article IX, the following:

"Provided that so long as the association is obligated to Home Owners' Loan Corporation to permit the Federal Home Loan Bank Board to designate two members of the Board of Trustees who shall be members of the Executive Committee, no amendment shall be adopted which would violate that obligation."

I hereby certify the above is a true and correct copy of a resolution adopted by the Board of Directors of Home Owners' Loan Corporation on June 4, 1937.

(Signed) H. R. Townsend, Assistant Secretary.

Group Health Association, Incorporated
1328 Eye Street, N. W.
Washington, D. C.

October 23, 1937.

Mr. F. W. Catlett, Member of the Board, Federal Home
Loan Bank Board Building, Washington, D. C.

DEAR MR. CATLETT:

You are invited to attend a dinner at the Mayflower Hotel
next Saturday evening, October 30th, at 6:30 o'clock.

This occasion marks the inauguration of a plan sponsored
and developed by the employees of the Home Owners' Loan
Corporation and other agencies under the Home Loan Bank
Board, to provide for themselves and their families, com-
plete medical service at low monthly rates, through the
establishment of a modern diagnostic and treatment clinic.

The principal speaker will be Dr. Richard Cabot of
Harvard University, an outstanding medical authority, who
has been in the forefront in the study of group practice and
group payment plans. For many years he was Chief of the
Medical Staff of the Massachusetts General Hospital and
is now Professor Clinical Medicine at the Harvard Medical
School. Other distinguished speakers will be present.

Tickets, which are \$2.50 each, may be obtained from Mr.
Ormond E. Loomis. It is hoped you will find it convenient
to attend.

Sincerely yours, (S) W. F. Penniman, President.

I hereby certify that the above is a true copy of a letter
in the records in the Office of the Secretary, Federal Home
Loan Bank Board.

(Signed) J. Francis Moore, Secretary, Federal
Home Loan Bank Board.

The exhibit included the By-Laws of Group Health.

(Defendants' Exhibit No. 49)

(Ink notation)

M.E.F.#519

12/2/37.

H. R. Townsend

December 2, 1937.

Hon. R. N. Elliott, Acting Comptroller General of the
United States, Washington, D. C.

DEAR MR. ELLIOTT:

In response to the request of your representatives, I have caused to be prepared certified copies of the action of the Board of Directors of Home Owners' Loan Corporation affecting its relationship with Group Health Association, Incorporated, which includes copy of the contract between Home Owners' Loan Corporation and Group Health Association, Incorporated. I attach also copy of the opinion of the General Counsel of the Corporation dated March 11, 1937, memorandum from him to Members of the Board and others dated December 28, 1936, and copy of an opinion and brief prepared by the legal staff, dated December 23, 1936.

I might add that the Director of Personnel of Home Owners' Loan Corporation made a study of the question of health conditions amongst its employees, including absences on account of illness, and conditions arising from indebtedness for doctors' and hospital bills, and advised the Board that heavy losses were resulting from the conditions existing and that it would contribute to the accomplishment of the purposes of the Corporation to provide medical examination upon employment and supervision of emergency rooms maintained by the Corporation and visiting nurse service maintained in connection with sick leaves, and to assist in preventing the conditions complained of. Upon those considerations and others, it was the opinion of the Board of Directors of Home Owners' Loan Corporation that the contract referred to should be entered into and the various adjustments made therein.

If we can furnish you further information in connection with this matter we shall be glad to do so.

Very truly yours, T. D. Webb, Vice Chairman.

HR E NM

Enc.

I hereby certify that the above is a true and correct copy of a carbon copy of a letter in the file of the Office of the Secretary, Home Owners' Loan Corporation.

J. Francis Moore, Secretary. (Seal.)

Home Owners' Loan Corporation
Washington

March 11, 1937.

Office of Horace Russell, General Counsel, Home Owners' Loan Corporation.

DEAR SIR:

I attach a proposed resolution authorizing a contract between Home Owners' Loan Corporation and Group Health Association, Incorporated, copy of which proposed contract is attached.

In my opinion, Home Owners' Loan Corporation has legal power to adopt such resolution and enter into such contract, if in the opinion of the Board of Directors the service to be rendered under the contract and the benefits to flow from the arrangement are necessary for the most efficient operation of the Corporation for the accomplishment of its purposes, and if in the opinion of the Board of Directors the price paid is a reasonable price.

I supplied Members of the Board and certain executives with a memorandum on this subject and a copy of the brief of the law on December 28, 1936, which provide a more adequate discussion, if you desire it.

Very truly yours, Horace Russell, General Counsel.
Attach.

I hereby certify that the attached, consisting of nine (9) pages, is a true copy of the original memoranda and opinion on file in the office of the Secretary, Home Owners' Loan Corporation.

J. Francis Moore, Secretary, Home Owners' Loan Corporation.

Federal Home Loan Bank Board
Washington

Office of Horace Russell, General Counsel.

December 28, 1936.

Mentorandum to: Members of the Board, Mr. R. R. Zimmerman, Mr. Charles A. Jones, Mr. Preston Delano, Mr. Nugent Fallon:

I attach for your information a brief on the question of the authority of the Federal Home Loan Bank Board and Home Owners' Loan Corporation to incur reasonable expenses in the encouragement of a Federal Credit Union amongst its employees and in the encouragement of the development of an organized medical service for the general benefit of its employees. The same rules of law apply to Federal Savings and Loan Insurance Corporation.

This matter has been carefully studied and we are of the opinion that in each case such reasonable expense may be incurred.

It is for the Board to determine in each case what is reasonable expense in this connection. I do not believe that it could be said that it would be reasonable expense to incur the total expense and provide completely a medical service, but on the other hand, it certainly would, in my opinion, be reasonable to incur the expense of investigating the question of an organized medical service and give advice and encouragement to the development of such, if, in the judgment of the Board, such development would promote the welfare of the establishment. How much further than the latter proposition would be reasonable is a matter for the exercise of the discretion of the Board.

In the case of a credit union, nominal space may be provided and all of the meetings of the union and all of its business may be transacted outside regular office hours, and it is clear that such would be justifiable. In some cases credit unions are being operated, I am informed, where the corporation, or establishment, or department, not only provides space, but provides such space during regular office hours and also provides personnel during regular office hours for the conduct of the business, and indeed, provides substantially for all expenses of the union. How much expense between these two extremes is reasonable and necessary for the welfare of the employees, and, therefore, of the establishment is a matter for the exercise of the discretion of the Board of Directors.

Horace Russell, General Counsel.

Attach.
cc—Briefs Section.
hr;enm;j

Legal Department Home Owners' Loan Corporation
Washington

December 23, 1936.

OPINION

Credit Union

Question.

The question has arisen as to whether the Federal Home Loan Bank Board and the Home Owners' Loan Corporation may incur expense for space and employees' time for the operation of a credit union, which is organized and operated for the general benefit and relief of employees.

A further question has arisen as to whether such expense may be incurred for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of employees.

Opinion.

Both questions are answered in the affirmative.

Discussion.

Section 19 of the Federal Home Loan Bank Act, as amended, provides in part as follows:

"The board shall have power to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this Act without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, and agents of the United States. . . . The board . . . shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed and paid. . . ."

This gives the Board broad authority to employ additional personnel and to incur necessary expenses in order to carry out the duties of the Board under the Act. Section 4(j) of Home Owners' Loan Act of 1933, as amended, provides in part, as follows:

The Corporation shall have power to select, employ, and fix the compensation of such officers, employees, attorneys;

or agents as shall be necessary for the performance of its duties under this Act, without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, or agents of the United States. * * * The Corporation shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government, and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds. * * *

The general rule is that corporations have those powers which are expressly granted in addition to those impliedly granted as reasonably incident and necessary to the carrying out of the powers expressly granted.

In *McCulloch v. Maryland*, (4 Wheat. 316), it is held that the word "necessary" is not to be given a narrow, restricted meaning.

In the case of *Gilbert v. Norfolk & W. Ry. Co.*, (1933), 171 S. E. 814, Judge Kenna states in his opinion, as follows:

"Consistent with the general rule that a private business corporation is carried on primarily for the profit of the stockholders, and that therefore its charter powers and those of its board of directors must be exercised for that purpose, it has, nevertheless, been generally held that such corporations may, for the ultimate benefit of the corporation itself translated into profit, use the funds of such corporation for purposes which might appear directly to be charitable and humanitarian. It has been held that private corporations may take proper steps to insure adequate housing, school facilities, and churches; that they may supply medical attention for their employees, defray the expenses of taking care of injured employees, maintain benefit funds for sick and injured employees, and perform a variety of other acts which, upon their face, yield no direct return or benefit to the corporation and are in the nature of humanitarian grants to the employee. Without citing specific cases to maintain this general assertion, reference may be had for that purpose to the annotation following the case of *Dodge v. Ford Motor Company*, 3 A. L. R. 443 (case 204 Mich. 459, 170 N. W. 668, 3 A. L. R. 413). * * *

In this annotation, 3 A. L. R. 443, at page 444, it is stated as follows:

"It is within the powers of a manufacturing corporation which has removed its plant to a sparsely settled locality, to purchase land in excess of its own needs, to make expenditures for streets and sewers, and a water supply therefor, to erect houses to be sold or rented to its employees, and to make contribution towards the establishment of a church, school, free library, and free baths, such a policy on its part reasonably tending to insure the continued and faithful service of a skilled and contented body of operators. *Steinway v. Steinway & Sons*, 1896, (17 Misc. 43, 40 N. Y. Supp. 718)."

Federal Credit Unions are organized under the Federal Credit Union Act (June 26, 1934, c. 750, sec. 1, 48 Stat. 1216), and in section 17 of said act are authorized to act as fiscal agents of the United States when requested so to do by the Secretary of the Treasury.

Credit unions are cooperative associations operating for the purpose of promoting thrift and of creating a source of credit for worthwhile purposes for its members. Through their operation saving is made easy and convenient. Credit unions are non-commercial in the sense that there are no promotional profits and that all investors share alike in proportion to the number of shares they own. The statute prescribes that membership is limited to persons having a common bond of occupation or association. Thus, the Washington Home Owners' Loan Corporation Federal Credit Union is exclusively for employees of the agencies under the Federal Home Loan Bank Board. A credit union now operates in each of the Regional Offices, the Richmond State Office and the San Antonio District Office. It is expected that each of the Home Owners' Loan Corporation's State Offices will soon have a credit union established. There are now upwards of 5,000 credit unions in the United States, of which 1,800 are under Federal charter and supervision as made possible by the Federal Credit Union Act.

It is assumed that in all cases where this question would arise the credit union is limited solely to the employees of the Federal Home Loan Bank Board agencies. R. N. Elliott, Acting Comptroller General of the United States, on November 3, 1936, held that in the absence of specific statu-

tory authority therefor, the Postmaster General may not lease or provide free of charge vacant space in Federal post office buildings to private parties, private enterprises or commercial concerns and that the two credit unions occupying space in the Post Office Building at Oakland, California, which were incorporated under the laws of the State of California were private enterprises.

As the credit unions are under the Federal Credit Union Act organized for the purpose of promoting thrift and creating a source of credit for its members who in the case of the Washington Home Owners' Loan Corporation Federal Credit Union are employees of agencies under the Federal Home Loan Bank Board, it seems that the Federal Home Loan Bank Board has authority under the act to incur expense for space and employees' time for the operation of a credit union which is organized and operated for the general benefit and relief of employees of agencies under it, and it also has authority under the act to incur expense for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of employees. The Home Owners' Loan Corporation has both authority under the act and implied authority as reasonably incident and necessary to the carrying out of the powers expressly granted in the act to incur expense for space and employees' time for the operation of a credit union which is organized and operated for the general benefit and relief of its employees and also to incur expense for space and employees' time for reasonable assistance in connection with the organization and relief of its employees and also to incur expense for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of its employees.

Opinion—Credit Union

Prepared by (s) Charles A. Barnard, Attorney.

Approved, (s) Kenneth G. Heisler, (s) Horace Russell.

December 23, 1936

Adm. Group Health, December 15, 1938.

Mr. R. L. Nagle, Secretary
Federal Home Loan Bank Board
Washington, D. C.

DEAR MR. NAGLE:

The following comments are offered with respect to changes in the By-Laws of Group Health Association, Inc.

Mr. E. K. Neumann, of the Legal Department of Home Owners' Loan Corporation, who took charge of such litigation as the Association was obliged to engage in, urged the Board of Trustees not to alter the Association's structure as contained in the By-Laws other than changes made necessary by revision of rates. The Board of Trustees adhered to this request and Mr. Neumann has approved the changes embodied in the revised draft now before the Federal Home Loan Bank Board for approval. At the same time, in conversations with the Department of Justice, attorneys representing it indicated that it probably would be best not to make radical changes in our By-Laws until certain questions now before the courts concerning the Association had been settled. On advising the Department of Justice what we intended to do with respect to our rate structure, its representatives indicated their agreement.

The Advisory Council, consisting of approximately 51 persons, recommended to the Board of Trustees many other changes beyond what are contained in the present draft. These suggested changes were not adopted and are the ones that really reflect structural changes in the Association's set-up.

By reference to Article VIII on page 9 of the draft, you will observe that amendments to the By-Laws may be made by a two-thirds majority (8 members) of the Board of Trustees, at any regular or special meeting, with the exception that amendments to Article VIII and Section 7 of Article VII shall be made only after submission to and by

vote of members of the Corporation. The particular portion referring to submission of amendments to members is new matter in the present revision and, of course, is intended for action in the future and not in the past. Heretofore, amendments to the By-Laws as provided in Article IX, Section 1 of the By-Laws, as revised to October 25, 1937, contained the following:

"Sec. 1. Amendments to these by-laws may be made, by affirmative vote of a two-thirds majority of the Trustees of the corporation at any regular meeting or at any special meeting when the proposed amendment has been set out in the notice of such meeting."

— Respectfully, (S.) W. C. Kirkpatrick, President.

cc: Mr. John H. Fahey, Chairman, Mr. T. D. Webb, Vice-Chairman, Mr. Fred W. Catlett, Board Member, Mr. William H. Husband, Board Member.

Copy

Memorandum

March 1, 1937.

To: Mr. Stevenson, Mr. Catlett, Dr. Hoagland, Mr. Russell.

From: R. R. Zimmerman, Group Health Association, Inc.

This is something of a prospectus of our proposed group health plan. Arrangements have been made for Mr. Rickcord of The Twentieth Century Fund, Inc., to discuss details of the plan with the Board at 10:30 o'clock, tomorrow morning. I am giving you this prospectus as you may have opportunity to sketch the material before the meeting.

R. R. Zimmerman.

Att.

I hereby certify that the above is a true and correct copy of an unsigned memorandum in the files of the Office of the Secretary, the original thereof not being in the files of the Secretary.

J. Francis Moore, Secretary.

March 15, 1941.

This is to certify that "prospectus" submitted under Item 2 of subpoena to the Home Owners' Loan Corpora-

tion is a photostat copy of the "prospectus" included in Minute Exhibit File Number 519 in the Office of the Secretary, Home Owners' Loan Corporation. This certification is made in lieu of submitting additional copy for the Minute Exhibit File.

J. Francis Moore, Secretary.

(Defendants' Exhibit No. 50)

Group Health Association, Inc.
For Employees of
Federal Home Loan Bank Board
And Affiliated Agencies.

Purpose

To bring the services of specially trained physicians and the benefits of modern medical equipment to people of average means, while preserving the personal relationship between patient and doctor.

Background

For some time, a group medical plan for employees of the Federal Home Loan Bank Board and its agencies has been studied. After extensive research followed by several preliminary meetings with some of our officials, a plan was created.

Mr. R. V. Rickcord of the Twentieth Century Fund, who is considered an authority in the field of group medicine, assisted materially in the formation of the plan. It was then presented to a meeting of about 1200 employees, the majority of whom indicated their interest in the proposal.

Since then over 800 employees have signed applications for membership and it is estimated 100 additional employees will desire to join as soon as the benefits are available.

Present Problem

The general health of our employees is a natural concern to Management from the standpoints of interrupted work and cost occasioned by lost time. It is estimated that absence from work caused by sickness costs the Federal Home Loan Bank Board and its agencies in excess of one-half million dollars annually.

Regular physical examinations with the opportunity of consulting competent physicians in whom employees have confidence and the knowledge that the doctor bills can be paid without hardship will lead to highly desirable preventive medicine and a reduction of sickness.

An analysis of money spent by the average person for medical treatment shows that only 2% goes for preventive purposes. A group medical service plan such as we contemplate will stimulate our employees to take proper steps to prevent illness.

The benefits of the plan are primarily for the employees of the Washington Office, but through action taken by the Medical Director, it is believed that similar benefits may be made available to our field employees, especially those in Regional Offices, by cooperating with similar groups in other cities.

There are at present 22 nurses in our employ assigned to the larger offices whose combined salaries total over \$30,000. In addition, about \$6,000 is spent annually for emergency room supplies and equipment.

While it is true these nurses work under local administrative supervision, they have no one to assist them in technical matters, health education, etc. Our Medical Director would work out many improvements in practice and procedure for the nurses and assist them in the matter of proper and adequate materials and increase the effectiveness of our emergency service.

The employment of persons physically unfit or with communicable diseases could be eliminated in the Home Office and in many of the large field offices where arrangements have been made with other medical groups by requiring a physical examination. Surely our employees should be protected by this precaution.

Facilities

Employees will elect a Board of Trustees who, in turn, will appoint a Medical Director and a Business Administrator. There would be assistants including physicians, technicians, nurses and clerical employees. Most of the service would be furnished at headquarters, suitably located in the downtown district of Washington, having the necessary consulting, examining and treatment rooms, and equipped

with apparatus and materials for extensive examination, diagnosis and treatment.

The medical benefits will include:

Consultations, treatments, analyses, X-Rays

Physical examinations*

Surgery

Obstetrics

Hospitalization

Health education

Subscription Rates

Based on information secured from other groups which are furnishing these services, and the creation of an itemized budget of expenses, medical service would be furnished to members at the following rates:

For the individual	\$2.20 per month
For the family	\$3.30 per month

Drugs, medicines, biologicals, appliances and other materials would be procured upon prescription or special arrangements at reduced rates.

The Patient Speaks

The rich can buy the benefits of modern medical science. The very poor get these benefits in charitable or tax supported clinics. But most of us who work for a living and wish to pay for what we get cannot afford the full advantage of modern medicine.

When it comes to medical care, the best is none too good for anybody. I would like to have my private doctor, who knows me and understands my problems. But I would like to feel certain that my doctor never treats me for anything with which he is not completely familiar; I wish that he would never hesitate to call in a consultant. I would like to feel, too, that my doctor has at hand all of the modern apparatus necessary to aid him. I wish that X-Rays and laboratory tests were sufficiently inexpensive so that I could afford them whenever I need them.

When I get sick enough, the doctor sends me to a hospital where there are all kinds of equipment. But perhaps hospital bills could be avoided, and much sickness could

be prevented, if it were possible for me to take advantage of modern medicine and science even while I am well.

It would be perfect to have a doctor, and a staff of specialists, and a place where they have everything.

The Doctor Speaks

The doctor can choose between two alternatives: he can become a "family doctor" doing general practice, or he can specialize. The average family doctor collects from whomever he can and wishes he had more opportunity for advanced study. The specialist, if he practices alone, finds it necessary to ask high fees for his services, and has a tendency to lose intimate contact with other fields of medicine.

Medical research has made immense strides, but medical administration has been slow in bringing the results to the people. A doctor may live in a great medical center like Washington and yet be unable to take full advantage of all the modern advances in diagnosis. We ought to have all the technical and laboratory services close at hand, and so moderately priced that we could use them without hesitation for our patients.

A perfect way to practice would be to have my own patients whose personal problems I know, and to be so situated that the factor of expense would never make it impossible for me to call in consulting physicians when they are needed. It would be fine to work in daily contact with a group of physicians. In this way my medical knowledge would be continually enriched and co-ordinated with other fields of medicine. Does this ideal have to remain a dream; can it not be accomplished by our organizing and co-operating?

What Is Group Medicine?

Medical care of a high quality has been made possible by recent scientific advances. The means used to distribute medical service to the public sometimes fail to keep pace with the development of medical knowledge. As this knowledge has advanced, new fields of specialization, and new accessories to diagnosis and treatment of disease have developed. "Group medicine" is a method of co-operative practice which brings together under one roof a number of physicians, the modern devices, and the technical assist-

ants required for complete medical care. Every patient of the group of co-operating physicians and surgeons has not only the services of his own doctor, but also the attention of a large group of doctors.

Besides making complete modern medical care available to its patients, group medical practice results in a great decrease in the expense of this care. Shared overhead, co-operative utilization of costly equipment, and completely organized technical help servicing a large number of physicians, greatly lower the cost to the patient.

Thoroughness Is the Keynote of Group Medical Service

Complete Analytical Diagnostic Study: When it is deemed advisable by the attending physician; patients are given a complete analytical diagnostic study in which all the resources of modern medicine are utilized.

After a thorough general medical examination, careful studies are made in all the special departments. In every case the following laboratory tests are performed: urinalysis, blood counts, serological tests, electrocardiogram, X-Rays of the teeth, heart and lungs, abdomen, gall-bladder, and a fluoroscopic study of the entire gastro-intestinal tract.

When further information is desired, additional laboratory tests and X-Ray studies are made. These include examination of stomach contents, feces, spinal fluid, special blood tests, basal metabolism, X-Ray of the bones, joints, sinuses, etc. Such an examination is possible at the Group Health Association because of the co-ordinated functioning of its many departments, and its complete equipment.

The constant co-operation between the physicians studying a case assures every patient that interrelated facts will be properly observed and that an adequate program of treatment will be instituted. The rational and efficient method of administering this service at the Group makes it available to thousands to whom it has previously been an inaccessible luxury.

A Complete Eye Service Assures Thorough Examination and Correct Glasses

Eyestrain causes headaches, nervousness, and tiredness, and always leads to a further impairment of vision. Certain disorders of the body are due to eyestrain, and can be

cured by properly fitted glasses. It is found frequently, on the other hand, that persons are wearing glasses unnecessarily, and that their eye disorder is due to disease in another portion of the body.

In the eye department at the Association the eyes are carefully examined by a specialist. Such conditions as conjunctivitis, styes, ulcers, cataracts, and glaucoma are readily diagnosed and treated here. Vision is thoroughly tested, and when necessary correct glasses are prescribed.

Complete Maternity Care

Complete medical service is available to expectant mothers including prenatal examinations, hospitalization, delivery and post-partum care. Here any woman may feel confident that she is obtaining the best of care throughout the entire period of her pregnancy.

Proper Care of Children in Babyhood Helps Assure A Healthy Life

Pediatrics: Perhaps no other single factor is so important in assuring life-long good health as proper medical attention during childhood. Working out proper feeding formulæ for infants and watching over the first months of their lives are important factors. A child should be watched carefully for the first sign of heart, allergic, or glandular disturbances which, if neglected, often result in permanent invalidism.

Modern immunization procedures for children, protecting them against smallpox, diphtheria, scarlet fever, and whooping-cough will also be available. These children's diseases need the attention of a trained physician to prevent possible serious consequences.

Surgery

In no single field has more progress been made during the last fifty years than that of surgery. And yet, in no single field are the costs of adequate care so prohibitive. To the fees of the surgeon, often in itself a serious burden, are added the expenses of hospitalization, anesthesia, drugs and the use of the operating room.

These prohibitive costs are responsible every year for innumerable deaths which could have been prevented by

timely surgery, particularly in such conditions as appendicitis, intestinal obstructions and early cancer. The services of our surgeon are available for the removal of tonsils and adenoids, appendix, gall bladders, goitre operations and other similar operations.

Hospitalization

Hospitalization will be provided to patients as recommended by the Medical Director or staff physician. All of the facilities necessary for the comfort and safety of the sick are at the command of our physicians.

In the event of accidents or sudden illness ambulance service is ready at all times without a charge to the patient.

Men and Machines

In the early days of medicine a stethoscope and a clinical thermometer were about the only mechanical aids available to the physician. But as medicine marches on, intricate machines are developed to aid man in his battle with disease and death. These complicated instruments, used chiefly in diagnosis, are often beyond the means of the average practitioner. Even if he could afford them a doctor practicing by himself might use them so infrequently as to make their maintenance a prohibitive expense. Yet, when the need arises, it is imperative that he have it:

But a group of physicians practicing together can own and make use of all the costly equipment so necessary to diagnosis and treatment. They can give their patients the benefits of these technical facilities at a fraction of the ordinary cost.

In the field of diagnosis X-Rays find their greatest value in the early detection of disease. Tuberculosis of the lungs may be discovered by X-Ray studies of the chest at an early stage, when direct examination by a thoroughly competent physician may fail to disclose it. The use of these valuable diagnostic aids results in a decrease of suffering and in a prolongation of life. Nevertheless, advantage is not always taken of this valuable aid in the study of disease because of its expense.

Estimated Budget

Technical Staff

Medical Director (surgeon)	\$ 7,500	
Special Nursing	2,000	
Hospitalization	7,500	
Physicians, four	18,000	
Nurses, two, for laboratory, physiotherapy, X-Ray and office services	3,600	
Clerical and Cleaning	1,400	\$40,000

Technical Services

• Medical Equipment	\$ 2,000	
Interest Charges (yearly aver. at 5%)	200	
Depreciation	1,200	
Drugs and Material, clinical	1,000	
Ambulance	200	4,600

Office Expenses

Rental	\$ 2,000	
Office Equipment	400	
Light, Telephone, Janitor and other Utility services	1,000	
Office Supplies	300	
Laundry	200	
Insurance	1,000	4,900
		\$49,500

Analysis

900 Members would pay	30,888	
Deficit		\$18,612
•• 834 Members would pay	\$28,234.80	
Deficit		\$21,265.20

When the plan is put into effect, it is conservatively estimated that membership will aggregate between 834 and 900, indicating a mean deficit of about \$20,000.

It is therefore recommended that the Board assist the enterprise to the extent of \$20,000 during its early existence.

- *Total \$10,000 to be paid for on five-year basis.
- **Number of signed applications in hand.

(Defendants' Exhibit 50-A)

Whereas; Home Owners' Loan Corporation desires to provide physical examination of applicants for employment, before employment, supervision of its present provisions for emergency treatment, and to cooperate in providing a substantially complete medical and hospital service to its employees and their families, all in the interest of the acquisition and maintenance of the highest possible type of personnel, which in the judgment of the Corporation is necessary for the accomplishment of the purposes of the Corporation, and

Whereas, Group Health Association, Incorporated, has been formed by certain employees of the Corporation to provide a substantially complete medical and hospital service, which is in position to provide the service the Corporation requires, therefore, it is agreed as follows:

1. Group Health Association, Incorporated, agrees to provide a staff and service to provide a substantially complete medical and hospital service to employees of the Home Owners' Loan Corporation who are its members on substantially the basis outlined in the memorandum submitted to the Members of the Board by Mr. R. R. Zimmerman, dated March 1, 1937.

2. Group Health Association, Incorporated, further agrees to provide at its headquarters at the request of the Home Owners' Loan Corporation physical examinations at the time of employment of all new employees in the Washington office.

3. Group Health Association, Incorporated, shall be required and agrees to manage and supervise the emergency rooms and the employees in the nursing service maintained in connection with such emergency treatment and in visitations to employees of the Washington office who are on sick leave.

4. Group Health Association, Incorporated, further agrees to provide bylaws satisfactory to the Corporation and to provide in its bylaws for two of its directors to be

elected from nominations made by the Federal Home Loan Bank Board, who shall be members of an executive committee of five.

5. In consideration of the foregoing, and all of the benefits to flow to the Home Owners' Loan Corporation, as a result of the operation of Group Health Association, Incorporated, Home Owners' Loan Corporation agrees to pay \$10,000 upon request, and beginning on the date of the establishment of its service the sum of \$833.33 monthly in advance for a period of twelve months, and thereafter the sum of \$1,666.67 per month for the succeeding twelve months.

6. It is further agreed that this contract shall remain in full force and effect for a period of two years from the date of the establishment of its service by the Group Health Association, Incorporated.

Authorized, entered into, executed and delivered by both parties as of the 22nd day of March, 1937.

Home Owners' Loan Corporation. By John H. Fahey, Chairman, Board of Directors. Group Health Association, Inc. By W. F. Penniman, President.

M.E.F. #519, 2/23/38. H. R. Townsend, p. 8423.

Contract

Whereas on March 22, 1937, a contract was entered into between the undersigned Home Owners' Loan Corporation and Group Health Association, Incorporated, and

Whereas since said date Group Health Association, Incorporated, has completed its organization, has established its clinic, and is now prepared to provide, and is providing, on a reasonable monthly prepayment basis, a group medical and hospitalization service which is of direct and indirect benefit to the Home Owners' Loan Corporation in providing such of its employees as desire to join the Group Health Association the opportunity to secure, on such reasonable monthly prepayment basis, medical service, preventive as well as curative, and hospitalization, and

Whereas since the execution of such contract certain of its provisions have already been performed, and certain

changes have occurred which make it desirable to simplify and adjust the terms of the contract referred to;

Therefore It Is Agreed by and between the Home Owners' Loan Corporation and Group Health Association, Incorporated, that Group Health Association, Incorporated, shall, for a period of at least two years from November 1, 1937, operate its clinic and provide substantially complete medical and hospital service to such employees of the Home Owners' Loan Corporation as care to join it on a reasonable monthly prepayment basis, and that it continue to maintain the high standard professional service it now affords, all in accordance with its character and under by-laws satisfactory to the Corporation.

In Consideration of the benefits already received and to be received during the period of this contract, the Home Owners' Loan Corporation has paid to Group Health Association, Incorporated, the full amount provided in the contract referred to, and the receipt of such sum in full of all obligations of the Home Owners' Loan Corporation is hereby acknowledged.

Executed And Delivered this the 23d day of February, 1938.

Home Owners' Loan Corporation. By John F. Fahey, Chairman; R. L. Nagle, Secretary. Group Health Association, Incorporated. By Ormond E. Loomis, Vice President. (Seal.)

Home Owners' Loan Corporation

Memo

To: Mr. T. D. Webb.

From: R. R. Zimmerman.

Date: March 9, 1937.

Subject: Nominees for Board of Trustees of Group Health Association.

I thought the Board would be interested in knowing the names of those nominated by the Nominating Committee,

from which eleven members of the Board of Trustees for the Group Health Association will be elected.

(S.) R. R. Zimmerman.

Attachment: List of Nominees.

I hereby certify that the above is a true and correct copy of an original copy of a memorandum on file in the Office of the Secretary, Home Owners' Loan Corporation. (S.) J. Francis Moore, Secretary. (Seal.)

Nominees

Name	Department
Ormond Loomis	Board
R. T. Berry	General Manager
W. F. Penniman	Assistant General Mgr.
Mrs. Pearl B. Murphy	Examining Division
Horace Russell	Legal
Wilbert Thompson	Legal
William Prigg	Auditing
Tom Daly	Auditing
Charles D. Otterson	Personnel
L. E. Ring	Loan Service
Mrs. Helen Andrews	General Manager, Correspondence Section
Ivan Carson	Property Management
Tom Klechak	HOLC Comptroller
Mabel Hanson	HOLC Comptroller, Purchase and Supply
George Hubbell	Reconditioning
H. R. Townsend	Secretary
C. K. Berlin	FHLBB Comptroller
Loretta White	Public Relations
Ralph Weese	Research and Statistics

March 9, 1937.

I hereby certify that this is a true and correct copy of an original on file in the Office of the Secretary, Home Owners' Loan Corporation. J. Francis Moore, Secretary. (Seal.)

Group Health Association, Inc., Washington, D. C.

March 22, 1937.

The Federal Home Loan Bank Board, New Post Office Building, Washington, D. C.

GENTLEMEN:

In accordance with the terms of the contract by and between the Group Health Association, Inc., and the Home Owners' Loan Corporation, approved at a meeting of the Federal Home Loan Bank Board, held on March 17, 1937, it is provided, among other things, that two of the Trustees of the Group Health Association, Inc., shall be elected from nominations made by the Federal Home Loan Bank Board, who shall be members of an Executive Committee of five.

It is respectfully requested, that in compliance therewith the Federal Home Loan Bank Board furnish the Group Health Association, Inc., with the names of those it desires to be placed on the ballot. If agreeable to the Federal Home Loan Bank Board, it would be preferable to provide the names of four candidates which will be grouped separately on the ballot and instructions given to vote for two.

Very truly yours, Group Health Association, Inc.
By W. F. Penniman, President Pro Tempore.

(Memo. in handwriting in right-hand margin: Ballard substituted for Wilson subsequently. H.R.T. 10/11/38)

(Memo. in handwriting on bottom of letter: Board of Directors nominated only two—A. S. R. Wilson and W. C. Kirkpatrick—3/22/37. (See P. 6837 HOLC Minutes) Penniman notified. H. R. Townsend)

(Minute Exhibit File No. 519, Home Owners' Loan Corporation, March 22, 1937)

(Copy)

Group Health Association, Inc., Washington, D. C.

March 22, 1937.

The Federal Home Loan Bank Board, New Post Office Building, Washington, D. C.

GENTLEMEN:

In accordance with the terms of the contract by and between the Group Health Association, Inc., and the Home

Owners' Loan Corporation, approved at a meeting of the Federal Home Loan Bank Board, held on March 17, 1937, it is provided, among other things, that two of the Trustees of the Group Health Association, Inc., shall be elected from nominations made by the Federal Home Loan Bank Board, who shall be members of an Executive Committee of five.

It is respectfully requested, that in compliance therewith the Federal Home Loan Bank Board furnish the Group Health Association, Inc., with the names of those it desires to be placed on the ballot. If agreeable to the Federal Home Loan Bank Board, it would be preferable to provide the name of four candidates which will be grouped separately on the ballot and instructions given to vote for two.

Very truly yours, Group Health Association, Inc.

By (S.) W. F. Penniman, President Pro Tempore.

(Board of Directors nominated only two—A. S. R. Wilson and W. C. Kirkpatrick—3/22/37.)

Penniman notified.

(S.) H. R. Townsend.

November 16, 1937.

Federal Home Loan Bank Board

DEAR SIRS:

I find that Group Health Association, Incorporated, has agreed to submit any amendment of its bylaws to the Federal Home Loan Bank Board for approval, and the attached amended bylaws are submitted for such approval.

The bylaws were amended by re-enactment in the attached form. Such amendment was necessitated to strengthen the legal position of the association. The original bylaws provided for payment of cash indemnities upon certain contingencies, such as hospitalization outside of the area of its operations, and such provision would have made it an insurance organization. These revised bylaws provide for it to secure doctors and provide hospital rooms and service for members to the extent of its available funds as limited in the bylaws, but do not provide for the payment of any cash indemnity at all. There is no change of substance but merely a change of the legal nature of the contract in this respect. The original bylaws permitted membership after separation from the Federal service. This

revision excludes membership except in the case of employees of the executive branch of the Government, excluding the Army and the Navy, and this provision is made to assure us the benefit of an exception from insurance regulations, if we are held to be an insurance company.

While there are changes at a number of places in the by-laws, all of these are intended to strengthen the legal position of the association, and none of them seem to the Board of Trustees to be of any substance. The Federal Home Loan Bank Board is requested officially to approve the revised bylaws.

Very truly yours, Horace Russell, General Counsel.

Approved by Board November 19, 1937.

(s) H. R. Townsend, Assistant Secretary. (Seal.)

I hereby certify that the above is a true and correct copy of a letter with the original signature of H. R. Townsend thereon.

J. Francis Moore, Secretary.

Exact Copy

(Ink Notation) M. E. F. #519, 12/2/37.

H. R. Townsend.

December 2, 1937.

Hon. R. N. Elliott,
Acting Comptroller General of the United States,
Washington, D. C.

Dear Mr. Elliott:

In response to the request of your representatives, I have caused to be prepared certified copies of the action of the Board of Directors of Home Owners' Loan Corporation affecting its relationship with Group Health Association, Incorporated, which includes copy of the contract between Home Owners' Loan Corporation and Group Health Association, Incorporated. I attach also copy of the opinion of the General Counsel of the Corporation dated March 11, 1937, memorandum from him to Members of the Board and others dated December 28, 1936, and copy of an opinion and brief prepared by the legal staff, dated December 23, 1936.

I might add that the Director of Personnel of Home Owners' Loan Corporation made a study of the question of health conditions amongst its employees, including absences on account of illness, and conditions arising from indebtedness for doctors' and hospital bills, and advised the Board that heavy losses were resulting from the conditions existing and that it would contribute to the accomplishment of the purposes of the Corporation to provide medical examination upon employment and supervision of emergency rooms maintained by the Corporation and visiting nurse service maintained in connection with sick leave, and to assist in preventing the conditions complained of. Upon these considerations and others, it was the opinion of the Board of Directors of Home Owners' Loan Corporation that the contract referred to should be entered into and the various adjustments made therein.

If we can furnish you further information in connection with this matter we shall be glad to do so.

Very truly yours, T. D. Webb, Vice Chairman. (Seal.)

HR. E. NM

Enc.

I hereby certify that the above is a true and correct copy of a carbon copy of a letter in the file of the Office of the Secretary, Home Owners' Loan Corporation.

(Signed) J. Francis Moore, Secretary.

I hereby certify that the attached, consisting of two pages is a true copy of the carbon copy of a statement entitled

"Accounts Receivable

Purchase & Supply Section

Group Health Association, Inc.

Outstanding to April 30, 1938"

on file in the Office of the Secretary, Home Owners' Loan Corporation.

(Signed) J. Francis Moore, Secretary. (Seal.)

Exact Copy

(Ink Notation) M. E. F. #519, 5/18/38.
H. R. Townsend, p. 8632.

Accounts Receivable

Purchase & Supply Section

Group Health Association, Inc.

Outstanding to April 30, 1938

Bulletin Board—Dec. 10, 1937—Constructed by the Carpenter—\$2.50.

Duplicating Services:

For	Req. No.	Job No.	Date Finished	
Mr. Berry	-	4-261	4-16 (1937)*	26 70
Mr. Penniman	-	4-317	4-22	1 77
Mr. Berry	-	4-475	4-29	1 91
Mr. Penniman	A-40808	7-355	7-29	16 07
Mr. Penniman	A-41702	8-65	8-3	8 86
Group Health	-	8-458	8-31	42 55
Mr. South	A-44160	9-147	9-9	5 24
Room 522	A-46309	9-418	9-23	3 80
Group Health	A-44618	9-178	11-15	308 00
Mr. Berry	A-51805	11-251	11-18	1 95
Mr. Berry	A-54378	12-281	12-15	2 39
Mr. Berry	A-55374	12-556	12-29	1 96
Room 327	A-53420	12-150	1-27 (1938)*	6 33
Room 327	A-53420	12-151	1-28	12 07
Total				442 10

(*) Ink notation on original copy.

Job. No.

4-261	Letters, notices, ballots, and envelopes	\$26 70
4-317	Letters	1 77
4-475	Letter	1 91
7-355	Memorandum and article, "Have you Paid Your Doctor"	16 07
8-65	Building Plan	8 86
8-458	Miscellaneous duplicating services	42 55
9-147	General conditions of specifications of medical clinic	5 24
9-418	Photostat copies showing lighting fixtures	3 80
9-178	Forms, blanks, pads, reports, instructions, etc., for use in clinic	308 00
11-251	Assignment forms	1 95
12-281	Hour change notices	2 39
12-556	Legal brief	1 96
12-150	Statement form	6 33
12-151	Purchase order forms	12 07

I hereby certify that the attached, consisting of HOLC Form 629, dated April 21, 1938, consisting of one page, two sides, is a true and correct copy of such form, with spaces

- 1 Chair—Side—Walnut Steel—General
Fireproofing Tag—2043
- 1 Typewriter—Underwood Nsls. #3905979
- 1 Typewriter—Underwood Std. #4446177
- 1 Typewriter—L. C. Smith #1068869
- 1 Desk—60" Sec. Walnut Steel—2681
- 1 Desk—60" Flat Top—Walnut Steel—2683
- 6 Fans—General Electric S—47744 S—57013
S—51227 S—56492 S—46191 S—49858
- 2 Files—4 Drawer Letter—G. S. 8707 409-9R
- 1 Clock—Electric Wall HOLC 35-23A
- 1 Infra-Red Lamp (Gibson 202)
- 1 Table 60" G. S. 5133
- 1 Table 50" 6403 G. S.
- 1 Table 36" Typist 7513
- 1 Table 36" Typist 3 drawers Drop Leaf
Oak 23925
- 1 Desk 45" Type. Green Steel #10716

This equipment can be seen on the Second Floor at 1328 Eye Street; N. W. between 6:30 and 7:30 P. M. April, 22, 1938.

If my bid is accepted, I shall make payment of the proposed purchase price in full, in the form of certified check, Cashier's check, or Postal Money Order, made payable to the Treasurer of the Home Owners' Loan Corporation. Upon payment, the title of the furniture passes to me, and any handling thereof and thereafter will be made at my risk. I also understand that final approval of the Washington Office of the Home Owners' Loan Corporation must be secured before my bid can be accepted, and that the right is reserved to reject any and all bids.

Signed:

Address

Firm Name

Telephone No.

By _____
Title or Position

Group Health Association, Inc.

Washington, D. C.

May 11, 1938.

To: Mr. R. L. Nagle, Secretary HOLC

From: W. C. Kirkpatrick

Re: Sale of Surplus Furniture to GHA by HOLC

I am in receipt of a copy of a memorandum from Mr. H. Caulsen, Assistant Secretary, addressed to Mr. D. C. Hair and the writer, under date of May 10, relative to the subject captioned above. Attached to this memorandum is a copy of Mr. Russell's opinion, under date of May 9, to the Corporation, in which he indicates that the furniture in question may be sold to this Association if the Board of Directors of the Home Owners' Loan Corporation deems it advisable.

I shall appreciate it if you will advise me as to whether or not the Board is willing to sell the furniture in question to this Association at a total cost of \$300.00 (all furniture now in place at the clinic, 1328 Eye Street, N. W.) on terms which will enable the Association to pay for such furniture at the rate of \$20.00 per month. I understand there are one or two typewriters, or possibly three, included in the list of furniture at the clinic which are of very little use because of their condition. It may be necessary that some adjustment will have to be made in connection with these typewriters.

I shall appreciate, however, hearing from you after you have consulted with the Board on this question.

W. C. Kirkpatrick, President.

WCK:BJ

#519

"The Board of Directors approved proposed amendments to Sections 4, 5 and 7 of Article II, Section 6 of Article III, Sections 5 and 6 of Article IV and Sections 1, 2, 3, 4, 6 and 7 of Article X of the by-laws of Group Health Association, Inc. as presented by said Association. A copy of the proposed amendments will be found in Minute Exhibit File #519."

I hereby certify that the above is a true excerpt from the Minutes of a Meeting of the Board of Directors of the Home Owners' Loan Corporation held on May 2, 1938.

(Sgd.) H. R. Townsend, Assistant Secretary.

(Pencil Notation M.E.F. #519 5/2/38. H. R. Townsend
p. 8587.

Mr. E. K. Neumann
Horace Russell

(Copy)

I have your memorandum of April 19, 1938, in reference to Group Health Association by-laws and see no objection to the proposed amendments.

I suggest that you check this matter with Mr. Kenneth G. Heisler who has worked on the question before and put the matter, which in your opinion should be acted upon by the Board of Trustees, in proper form for action and discuss it with the president and go before the Board of Trustees and ask for such action as you advise. I believe the Board meets next Monday.

(Signed) Horace Russell, General Counsel.

Attach.

To the Federal Home Loan Bank Board:

The Conference above suggested was held, resulting in changes as outlined.

(Signed) A. Blaine York, Counsel.

April 27, 1938.

Federal Home Loan Bank Board.
W. C. Kirkpatrick.

April 28, 1938.

Amendment of By-Laws G. H. A.

Counsel for Group Health Association have found that the following amendments to its by-laws will relieve it of some rather embarrassing moments in disposing of the case of G. H. A. vs. U. S. Attorney and others now pending in the U. S. Court for the District of Columbia. None of the changes go far beyond the process of so re-vamping the language as to better meet the legal questions raised. It is hoped you will not find the changes objectionable.

(1) Amend Section 4 of Article II to read as follows:

"Dependents of those hereafter becoming members of this corporation will not be eligible to the benefits of this corpo-

ration until the member has been in good standing for a period of three calendar months, beginning with the date of his or her application, provided, however, that this section shall not apply to dependents of members in good standing as of the date of beginning operations.

"Employees who do not apply for membership within one calendar month from the date of entrance on duty in the government service aforesaid shall not be eligible to the benefits of this corporation until three calendar months after the date of their application, during which three months, however, no dues shall be paid by or be chargeable to such applicants."

(2) Amend Section 5 of Article II to read as follows:

"The Board of Trustees shall reject an application for membership without cause if the applicant is not an employee of the character hereinabove designated. It shall have the right, for just and reasonable cause, to reject any application for membership, and may drop or expel from membership, after not less than fifteen (15) days notice and hearing before the Board of Trustees, any person who, in the opinion of said Board of Trustees, shall have abused the privileges of his membership or is otherwise guilty of wrongful conduct detrimental to the corporation or its membership. The Board of Trustees, after hearing as hereinbefore provided, shall be the sole judge of whether the conduct in question warrants expulsion from membership. Membership dues shall end upon expulsion."

(3) Amend Section 7 of Article II to read as follows:

"No dependent of a member not listed on the dependent list of such member at the time he becomes a member shall be eligible for benefits hereunder until the expiration of three calendar months after such dependent is placed on the dependent list of such member, with the exception of newly married wives or husbands, or newly born children, who shall be eligible for such benefits from the date of listing provided such listing is made not later than one calendar month after such marriage or birth. No dependent in any case shall be eligible for benefits at a time when the member himself is not so eligible."

(4) Amend Section 6 of Article III to read as follows:

"Every member shall have the right to vote, in person or by proxy, in any election or at any meeting of the corporation."

(5) Amend Section 5 of Article V to read as follows:

"The Board of Trustees shall contract for and in behalf of the members of this corporation, with physicians duly licensed to practice their profession in the District of Columbia, who shall render such service to the members as may be provided in said contract. One of said physicians shall be designated as the Medical Director, who, with the approval of the Trustees, may engage the services of such assistants, orderlies, nurses, or other help, in order to properly render the services contracted for."

(6) Substitute the following in lieu of Section 6, Article V, to-wit:

"The Board of Trustees shall in no way regulate or supervise the practice of medicine by any physician with whom it contracts for the care of members nor shall it in any way supervise, regulate or interfere with the usual professional relationship between such physician and his patient member, and every such contract entered into by and between a physician and the corporation shall contain a positive covenant to that effect."

(7) Amend Section 1 of Article X to read as follows:

"The contract or contracts to be made by this corporation on behalf of the members thereof with physicians, as provided in Section 5 of Article V, or with others, shall provide for the following services to members:

"Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes, laboratory tests, x-ray examinations; surgical operations, confinement cases, and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (two-bed room) or a private room, limited in either case to a period not to exceed 21 days for any one illness; provided, however, that each member desiring to occupy a private room or a semi-private room of his own choice shall pay so much of the cost

of such room as shall exceed the sum of \$4.00 per day; provided, further, that such member shall make such advance payments to assure the aforesaid reimbursement as the Trustees shall require; and provided, further, that the benefits provided outside of the territory of the association shall be limited to the provision of a hospital room for the time and as is herein provided.

"Members or dependents in order to avail themselves of medical and surgical service shall come to the doctor's office if such is possible from the nature of their illness. Doctors will answer necessary house calls within a radius of ten miles from the District of Columbia line, except that the Medical Director may provide for house calls not exceeding twenty miles. Members will furnish such doctor with any information he may request relative to their condition and membership and should, at all times, have available their membership card for identification."

"The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

(8) Amend Section 2 of Article X to read as follows:

"The contract or contracts to be made by this corporation on behalf of the members, with physicians, as provided in Section 5 of Article V of these By-Laws, or with others, shall not provide for the following services to members:

- (1) Treatment of industrial accident cases;*
- (2) Surgery of the brain or nervous system;*
- (3) Any treatment after the time that the Medical Director recommends commitment to an institution in mental, tubercular, drug or alcohol addiction cases.*

(9) Amend Section 3 of Article X to read as follows:

"Any contract entered into by the corporation on behalf of its members will require the members to pay for the following:

- (1) Medicines, drugs, surgical appliances, such as orthopedic devices and crutches; eye glasses; artificial limbs or eyes; and hearing devices;*
- (2) Radium and deep x-ray treatments;*
- (3) Dental work;*

- (4) Oxygen tanks or tents and materials;
- (5) Blood transfusions;
- (6) Special nursing service if not ordered by the Medical Director;
- (7) Treatment, services, supplies and other items prescribed or ordered by a physician not in a contractual relationship with the corporation and its member, but employed by an individual member, including fees of such physician.
- (8) Treatment of venereal diseases at the rate of Fifty Cents (50¢) per treatment.
- (9) Hospitalization in excess of that mentioned in Section 1 of this article.

"The corporation shall make an effort to secure at reduced rates all the medical services and items for which the member is required to pay."

(10) That the following be adopted in lieu of Section 4 of Article X, as follows, to-wit:

"Section 4 (a) The corporation does not guarantee that it will provide any or all of the services above specified and for which it will attempt to contract on behalf of its members and it shall not be liable to any member or his dependent in any manner whatever if it should for any reason, including lack of funds, be unable to procure any or all of said services when called upon to do so.

"(b) The corporation does not guarantee that any physician or physicians with whom it may enter into a contract to render services to its members will perform such contract and its only obligation in the event of the breach of such contract by any physician shall be to use its best effort to procure the needed services from another source.

"(c) The corporation shall not be liable to its members or their dependents for any act of omission or commission on the part of physicians or other persons with whom it may contract for the rendition of services to its members and their dependents.

(11) That Section 6 of Article X be amended to read as follows:

"Any person referred to herein as dependent, to be eligible to the benefits of the corporation, must be totally dependent upon a member of the corporation for a livelihood

prior to and at the time of such person's disability and prior to and at the time of need of medical service. Under this provision persons who are regularly working and receiving compensation for their services are not dependent, with the exception that wife or husband, or school children who work during the summer months only, may be considered dependent. Any member who accepts benefits hereunder to which he is not entitled, or who secures such benefits for any person not entitled thereto, *shall pay a penalty commensurate with the value of the services so received as may be determined by the Board of Trustees.*"

(12) Repeal all of Section 7 of Article X.

Respectfully W. C. Kirkpatrick, President.

Approved: — — —, Chairman; — — —, Vice-Chairman.

The defendants re-offered portions of the records of the Twentieth Century Fund, the Good Will Fund and the Joint Committee of the Twentieth Century Fund and the Good Will Fund marked Def. Exs. 41, 40, 39, 38, 31, 32, 33, 34, 35, 36, and 37, all of which are set out in defendant's offer of proof, page 1011-1025 supra.

The defendants supplemented the offers of proof previously made and in connection therewith offered the letter of Comptroller General Elliott to Senator McCarran dated December 16, 1937, and the exhibits thereto annexed marked Def. Ex. 22. This exhibit, except enclosures, is identical in words and figures with the letter heretofore set forth under the offer of proof made during the testimony of Dr. Woodward marked Def. Ex. 30, pages 910-920 supra.

The enclosures read as follows:

(Exhibit A)

December 28, 1936.

Memorandum to:

Members of the Board, Mr. R. R. Zimmerman, Mr. Charles A. Jones, Mr. Preston Delano, Mr. Nugent Fallon.

I attach for your information a brief on the question of the authority of the Federal Home Loan Bank Board and Home Owners' Loan Corporation to incur reasonable

expenses in the encouragement of a Federal Credit Union amongst its employees and in the encouragement of the development of an organized medical service for the general benefit of its employees. The same rules of law apply to Federal Savings and Loan Insurance Corporation.

This matter has been carefully studied and we are of the opinion that in each case such reasonable expense may be incurred.

It is for the Board to determine in each case what is reasonable expense in this connection. I do not believe that it could be said that it would be reasonable expense to incur the total expense and provide completely a medical service, but on the other hand, it certainly would, in my opinion, be reasonable to incur the expense of investigating and the question of an organized medical service and give advice and encouragement to the development of such, if, in the judgment of the Board, such development would promote the welfare of the establishment. How much further than the latter proposition would be reasonable is a matter for the exercise of the discretion of the Board.

In the case of a credit union, nominal space may be provided and all of the meetings of the union and all of its business may be transacted outside regular office hours, and it is clear that such would be justifiable. In some cases credit unions are being operated, I am informed, where the corporation, or establishment, or department, not only provides space, but provides such space during regular office hours and also provides personnel during regular office hours for the conduct of the business, and indeed, provides substantially for all expenses of the union. How much expense between these two extremes is reasonable and necessary for the welfare of the employees, and therefore, of the establishment is a matter for the exercise of the discretion of the Board of Directors.

Horace Russell, General Counsel.

Attach. cc—Briefs Section. hr:erm:j.

Opinion—Credit Union

December 23, 1936.

Legal Department, Home Owners' Loan Corporation

Horace Russell, General Counsel, Washington, D. C.

Question

The question has arisen as to whether the Federal Home Loan Bank Board and the Home Owners' Loan Corporation may incur expense for space and employees' time for the operation of a credit union, which is organized and operated for the general benefit and relief of employees.

A further question has arisen as to whether such expense may be incurred for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of employees.

Opinion

Both questions are answered in the affirmative.

Discussion

Section 19 of the Federal Home Loan Bank Act, as amended, provides in part as follows:

"The board shall have power to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this Act without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, and agents of the United States. . . . The board . . . shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed and paid. . . ."

This gives the Board broad authority to employ additional personnel and to incur necessary expenses in order to carry out the duties of the Board under the Act.

Section 4(j) of Home Owners' Loan Act of 1933, as amended, provides in part, as follows:

"The Corporation shall have power to select, employ, and fix the compensation of such officers, employees, at-

torneys, or agents as shall be necessary for the performance of its duties under this Act, without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, or agents of the United States. * * * The Corporation shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government, and shall determine its necessary expenditures under this Act and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds. * * *

The general rule is that corporations have those powers which are expressly granted in addition to those impliedly granted as reasonably incident and necessary to the carrying out of the powers expressly granted.

In *McCulloch v. Maryland* (4 Wheat. 316), it is held that the word "necessary", is not to be given a narrow, restricted meaning.

In the case of *Gilbert v. Norfolk & W. Ry. Co.* (1933), 171 S. E. 814, Judge Kenna states in his opinion, as follows:

"Consistent with the general rule that a private business corporation is carried on primarily for the profit of the stockholders, and that therefore its charter powers and those of its board of directors must be exercised for that purpose, it has, nevertheless, been generally held that such corporations may, for the ultimate benefit of the corporation itself translated into profit, use the funds of such corporation for purposes which might appear directly to be charitable and humanitarian. It has been held that private corporations may take proper steps to insure adequate housing, school facilities, and churches; that they may supply medical attention for their employees, defray the expenses of taking care of injured employees, maintain benefit funds for sick and injured employees, and perform a variety of other acts which, upon their face, yield no direct return or benefit to the corporation and are in the nature of humanitarian grants to the employee. Without citing specific cases to maintain this general assertion, reference may be had for that purpose to the annotation following the case of *Dodge v. Ford Motor Company*, 3 A. L. R. 443 (case 204 Mich. 459, 170 N. W. 668, 3 A. L. R. 413). * * *

In this annotation, 3 A. L. R. 443, at page 444, it is stated as follows:

"It is within the powers of a manufacturing corporation which has removed its plant to a sparsely settled locality, to purchase land in excess of its own needs, to make expenditures for streets and sewers, and a water supply therefor, to erect houses to be sold or rented to its employees, and to make contribution towards the establishment of a church, school, free library, and free baths, such a policy on its part reasonably tending to insure the continued and faithful service of a skilled and contented body of operators. *Steinway v. Steinway & Sons*, 1896, (17 Misc. 43, 40 N. Y. Supp. 718)."

Federal Credit Unions are organized under the Federal Credit Union Act (June 26, 1934, c. 750, sec. 1, 48 Stat. 1216), and in section 17 of said act are authorized to act as fiscal agents of the United States when requested so to do by the Secretary of the Treasury.

Credit unions are cooperative associations operating for the purpose of promoting thrift and of creating a source of credit for worthwhile purposes for its members. Through their operation saving is made easy and convenient. Credit unions are non-commercial in the sense that there are no promotional profits and that all investors share alike in proportion to the number of shares they own. The statute prescribes that membership is limited to persons having a common bond of occupation or association. Thus, the Washington Home Owners' Loan Corporation Federal Credit Union is exclusively for employees of the agencies under the Federal Home Loan Bank Board. A credit union now operates in each of the Regional Offices, the Richmond State Office and the San Antonio District Office. It is expected that each of the Home Owners' Loan Corporation's State Offices will soon have a credit union established. There are now upwards of 5,000 credit unions in the United States, of which 1,800 are under Federal charter and supervision as made possible by the Federal Credit Union Act.

It is assumed that in all cases where this question would arise the credit union is limited solely to the employees of the Federal Home Loan Bank Board agencies.

R. N. Elliott, Acting Comptroller General of the United States, on November 3, 1936, held that in the absence of specific statutory authority therefor, the Postmaster General may not lease or provide free of charge vacant space in Federal post office buildings to private parties, private enterprises or commercial concerns and that the two credit unions occupying space in the Post Office Building at Oakland, California, which were incorporated under the laws of the State of California, were private enterprises.

As the credit unions are under the Federal Credit Union Act organized for the purpose of promoting thrift and creating a source of credit for its members who in the case of the Washington Home Owners' Loan Corporation Federal Credit Union are employees of agencies under the Federal Home Loan Bank Board, it seems that the Federal Home Loan Bank Board has authority under the act to incur expense for space and employees' time for the operation of a credit union which is organized and operated for the general benefit and relief of employees of agencies under it, and it also has authority under the act to incur expense for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of employees. The Home Owners' Loan Corporation has both authority under the act and implied authority as reasonably incident and necessary to the carrying out of the powers expressly granted in the act to incur expense for space and employees' time for the operation of a credit union which is organized and operated for the general benefit and relief of its employees and also to incur expense for space and employees' time for reasonable assistance in connection with the organization and relief of its employees and also to incur expense for space and employees' time for reasonable assistance in connection with the organization and operation of a medical service for the general benefit of its employees.

(From Minute Exhibit File No. 519, Home Owners' Loan Corporation)

(Exhibit B)

March 1, 1937.

Memorandum:

To: Mr. Stevenson, Mr. Catlett, Dr. Hoagland, Mr. Russell.

From: R. R. Zimmerman, Group Health Association, Inc.

This is something of a prospectus of our proposed group health plan. Arrangements have been made for Mr. Rickcord of The Twentieth Century Fund, Inc., to discuss details of the plan with the Board at 10:30 o'clock, tomorrow morning. I am giving you this prospectus as you may have opportunity to sketch the material before the meeting.

R. R. Zimmerman

Att.

I hereby certify that the foregoing is a true copy of a memo. on file in H. O. L. C. Minute Exhibit File No. 519.

(Signed) R. L. Nagle, Secretary Home Owners' Loan Corporation. (Seal of the Home Owners' Loan Corporation.)

EXHIBIT C

Mr. Rickcord explained details of a proposed group medical service plan. Messrs. Russell and Zimmerman were directed to prepare and present a definite outline of procedure for consideration by the Board of Directors.

Washington, D. C.

December 2, 1937.

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of a Meeting of the Board of Directors, Home Owners' Loan Corporation, March 2, 1937.

(Signed) H. R. Townsend, Assistant Secretary.
(Seal.)

EXHIBIT D

March 11, 1937.

Home Owners' Loan Corporation.

DEAR SIRs:

I attach a proposed resolution authorizing a contract between Home Owners' Loan Corporation and Group Health Association, Incorporated, copy of which proposed contract is attached.

In my opinion, Home Owners' Loan Corporation has legal power to adopt such resolution and enter into such contract, if in the opinion of the Board of Directors the service to be rendered under the contract and the benefits to flow from the arrangements are necessary for the most efficient operation of the Corporation for the accomplishment of its purposes, and if in the opinion of the Board of Directors the price paid is a reasonable price.

I supplied Members of the Board and certain executives with a memorandum on this subject and a copy of the brief of the law on December 28, 1936, which provide a more adequate discussion, if you desire it.

Very truly yours, Horace Russell, General Counsel.

Attach.

EXHIBIT E

"Whereas Group Health Association, Incorporated, has been organized and is about to establish a medical service amongst employees; and

"Whereas it offers a service to the Corporation which is deemed to be advisable and of value to the Corporation in the accomplishment of its purposes, equivalent at least to the expense involved, and such a service appears to be necessary for the most efficient accomplishment of the purposes of the Corporation: Therefore

Be it Resolved, That the proposed contract, a copy of which appears in Minute Exhibit File No. 519 is hereby approved and that the Chairman be authorized to execute the same on behalf of the Corporation."

Washington, D. C.
December 2, 1937.

I hereby certify that the foregoing is a true and correct copy of resolution adopted by the Board of Directors of Home Owners' Loan Corporation on March 17, 1937.

(Signed) H. R. Townsend, Assistant Secretary. (Seal.)

EXHIBIT F

Whereas, Home Owners' Loan Corporation desires to provide physical examination of applicants for employment, before employment, supervision of its present provisions for emergency treatment, and to cooperate in providing a substantially complete medical and hospital service to its employees and their families, all in the interest of the acquisition and maintenance of the highest possible type of personnel, which in the judgment of the Corporation is necessary for the accomplishment of the purposes of the Corporation, and

Whereas, Group Health Association, Incorporated, has been formed by certain employees of the Corporation to provide a substantially complete medical and hospital service, which is in position to provide the service the Corporation requires, therefore, it is agreed as follows:

1. Group Health Association, Incorporated, agrees to provide a staff and service to provide a substantially complete medical and hospital service to employees of the Home Owners' Loan Corporation who are its members on substantially the basis outlined in the memorandum submitted to the Members of the Board by Mr. R. R. Zimmerman, dated March 1, 1937.

2. Group Health Association, Incorporated, further agree to provide at its headquarters at the request of the Home Owners' Loan Corporation physical examinations at the time of employment of all new employees in the Washington office.

3. Group Health Association, Incorporated, shall be required and agrees to manage and supervise the emergency rooms and the employees in the nursing service maintained in connection with such emergency treatment and in visitations to employees of the Washington office who are on sick leave.

4. Group Health Association, Incorporated, further agrees to provide bylaws satisfactory to the Corporation and to provide in its bylaws for two of its directors to be elected from nominations made by the Federal Home Loan Bank Board, who shall be members of an executive committee of five.

5. In consideration of the foregoing, and all of the benefits to flow to the Home Owners' Loan Corporation, as a result of the operation of Group Health Association, Incorporated, Home Owners' Loan Corporation agrees to pay \$10,000 upon request, and beginning on the date of the establishment of its service the sum of \$833.33 monthly in advance for a period of twelve months, and thereafter the sum of \$1,666.67 per month for the succeeding twelve months.

6. It is further agreed that this contract shall remain in full force and effect for a period of two years from the date of the establishment of its service by the Group Health Association, Incorporated.

Authorized, entered into, executed and delivered by both parties as of the 22nd day of March, 1937.

Home Owners' Loan Corporation, by (S.) John H. Fahey, Chairman, Board of Directors.

Group Health Association, Inc., by (S.) W. F. Penniman, President Pro tempore.

I hereby certify the foregoing is a true and correct copy of the contract appearing in Minute Exhibit File No. 519 and approved by the Board of Directors, Home Owners' Loan Corporation at a meeting held on March 17, 1937.

(S.) H. R. Townsend, Assistant Secretary. (Seal.)

EXHIBIT G

The Board of Directors nominated Messrs. John W. Ballard and W. C. Kirkpatrick for election as trustees of Group Health Association, Incorporated, pursuant to Paragraph 4 of the agreement between said association and Home Owners' Loan Corporation.

Washington, D. C.

December 2, 1937.

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of a Meeting of the Board of

Directors, Home Owners' Loan Corporation, March 22, 1937.

(S.) H. R. Townsend, Assistant Secretary. (Seal.)

EXHIBIT H

"Whereas Home Owners' Loan Corporation contracted with Group Health Association, Incorporated, for certain services to be rendered as is shown by the resolution of March 17, 1937, and the contract in Minute Exhibit File No. 519, and

Whereas said contract requires said association to provide bylaws satisfactory to the Corporation and to provide in its bylaws for two of its directors to be elected from nominations made by the Federal Home Loan Bank Board who shall be members of an Executive Committee of five, and

Whereas proposed bylaws have been submitted and considered: Therefore.

Be it Resolved, That said bylaws submitted as shown in Minute Exhibit File No. 519 be approved subject to amendment as follows:

By striking the words 'and administrative' in the first line of section 4, of Article V, on Page 9; and

By adding to Section 1, of Article IX, the following:

"Provided that so long as the association is obligated to Home Owners' Loan Corporation to permit the Federal Home Loan Bank Board to designate two members of the Board of Trustees who shall be members of the Executive Committee, no amendment shall be adopted which would violate that obligation.'"

Washington, D. C.

December 2, 1937.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors, Home Owners' Loan Corporation, June 4, 1937.

(Signed) H. R. Townsend, Assistant Secretary.

(Seal of the Home Owners' Loan Corporation.)

EXHIBIT I

"Whereas Group Health Association, Incorporated, has contracted with Home Owners' Loan Corporation to perform certain services for the Corporation and said Association is engaged in rendering certain services to employees of the Corporation, and

Whereas certain employees have assigned or are about to assign a part of their earnings to Group Health Association, Incorporated, in payment for such services to be rendered to them, and said association is about to begin business at an early date. Therefore

Be it Resolved, That upon receipt of a certificate from Group Health Association, Incorporated, certifying the date upon which its service will be available, the pay roll of Home Owners' Loan Corporation from and after such date shall be prepared to show deductions from the salaries due employees who have executed assignments to Group Health Association, Incorporated, which have been filed with the Treasurer of the Corporation, such deductions to be in the amounts specified in such assignments:

Be it Further Resolved, That the pay rolls of the Corporation be certified on and after such date as so prepared.

Be it Further Resolved, That on and after such date the Corporation pay to Group Health Association, Incorporated, the aggregate amount of such deductions promptly on or after such pay roll date."

Washington, D. C.

December 2, 1937.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors, Home Owners' Loan Corporation, June 7, 1937.

(Signed) H. R. Townsend, Assistant Secretary.

(Seal of the Home Owners' Loan Corporation.)

EXHIBIT J

After discussion, the following resolution was adopted:

"WHEREAS on the 17th of March, 1937, Home Owners' Loan Corporation approved a contract with Group Health Association, Incorporated, by the provisions of which the

Corporation agreed for its benefit to support the work of the Association through the first two years of its operation to the extent of \$20,000 each year, and

WHEREAS it is now apparent that in order to secure at a reasonable rental appropriate quarters for the contemplated service of the Association it is necessary to expend several thousand dollars for alterations and prepare for occupancy on a five-year lease, and

WHEREAS in addition to the foregoing it is necessary for the Association to purchase several thousand dollars worth of professional equipment in which by obtaining favorable prices and substantial discounts it is necessary to make cash investments the totals of which were not adequately anticipated; Therefore

BE IT RESOLVED, That Home Owners' Loan Corporation, in order to provide for and make possible the economies contemplated in making building repairs and cash purchases, pay upon demand to Group Health Association, Incorporated, in addition to a \$10,000 payment heretofore authorized on demand, the sum of \$15,000 to be deducted from the payments to be made during the second year of the operation of Group Health Association, Incorporated, the remaining balance for such second year to be paid at the rate of \$416.66 per month, and

BE IT FURTHER RESOLVED, That Home Owners' Loan Corporation, in order to make use of its favorable buying power at government rates, purchase for cash at the maximum discounts supplies and equipment upon its regular voucher, approved by William F. Penniman, President of Group Health Association, Incorporated, at government contract rates, and deduct the amount paid for such equipment from the cash payment herein provided for, it being understood that the total purchases and cash payment will not exceed the total herein provided for."

Washington, D. C., December 2, 1937.

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of a Meeting of the Board of Directors of Home Owners' Loan Corporation held on August 10, 1937.

(Signed) H. R. Townsend, Assistant Secretary.

(Seal of the Home Owners' Loan Corporation)

EXHIBIT K

"WHEREAS on March 17, 1937, Home Owners' Loan Corporation approved a contract with Group Health Association, Inc., providing for certain payments for health service, and

WHEREAS in equipping itself for the rendition of such service Group Health Association requires advance payment of some of the funds contracted to be paid and it appears to the interest of the Corporation to make such advance payment in order to facilitate the service to be rendered; Therefore

BE IT RESOLVED, That Home Owners' Loan Corporation, in addition to the payment under said contract heretofore authorized, does now authorize the payment of \$5000 in cash upon demand in lieu of payments to be made under said contract for the second year of operation and the adjustment of the same made by resolution of August 10, 1937."

Washington, D. C., December 2, 1937.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors, Home Owners' Loan Corporation, September 9, 1937.

(Signed) H. R. Townsend, Assistant Secretary.

(Seal of the Home Owners' Loan Corporation)

EXHIBIT L

Mr. R. R. Zimmerman, Director of Personnel, and Mr. Luke E. Keeley, Associate General Counsel, Home Owners' Loan Corporation, entered the meeting and discussed with the Board a plan for group medical service for employees of the Board and the agencies under its supervision. A committee was appointed consisting of Mr. Keeley, as Chairman, and Messrs. Loomis and Zimmerman to draft a letter on this subject for the signature of the Chairman of the Board to be sent to all employees.

Washington, D. C., December 2, 1937.

I hereby certify that the foregoing is a true and correct excerpt from the Minutes of a Meeting of the Federal Home Loan Bank Board, October 1, 1936.

(Signed) H. R. Townsend, Assistant Secretary.

(Seal of the Home Owners' Loan Corporation)

EXHIBIT M

November 16, 1937.

Federal Home Loan Bank Board,

DEAR SIR:

I find that Group Health Association, Incorporated, has agreed to submit any amendment of its bylaws to the Federal Home Loan Bank Board for approval, and the attached amended bylaws are submitted for such approval.

The by-laws were amended by re-enactment in the attached form. Such amendment was necessitated to strengthen the legal position of the association. The original bylaws provided for payment of cash indemnities upon certain contingencies, such as hospitalization outside of the area of its operations, and such provision would have made it an insurance organization. These revised by-laws provide for it to secure doctors and provide hospital rooms and service for members to the extent of its available funds as limited in the bylaws, but do not provide for the payment of any cash indemnity at all. There is no change of substance but merely a change of the legal nature of the contract in this respect. The original bylaws permitted membership after separation from the Federal Service. This revision excludes membership except in the case of employees of the executive branch of the Government, excluding the Army and the Navy, and this provision is made to assure us the benefit of an exception from insurance regulations, if we are held to be an insurance company.

While there are changes at a number of places in the by-laws, all of these are intended to strengthen the legal position of the association, and none of them seem to the Board of Trustees to be of any substance. The Federal Home Loan Bank Board is requested officially to approve the revised bylaws.

Very truly yours,

Horace Russell, General Counsel.

Approved by Board November 19, 1937.

(Signed) H. R. Townsend, Assistant Secretary.

Exhibit N is By-Laws of Group Health Association, Inc., dated October 25, 1937.

EXHIBIT O**Assignment**

For value this day received, the undersigned does hereby assign, set over, and direct

Home Owners' Loan Corporation

Federal Savings & Loan Insurance Corp'n.

to pay to Group Health Association, Incorporated, the sum of _____ dollars semi-monthly, out of any salary or wages due or to become due to the undersigned, from said Corporation so long as the undersigned is a member of Group Health Association, Incorporated.

Dated at Washington, D. C., this the ____ day of _____, 19 ____.

Signature

Witnesses:

EXHIBIT P

Group Health Association, Inc.

Washington, D. C.

Amended and Supplemental Application for Membership

(Print Name) I, _____, hereby apply for membership in the Group Health Association, Incorporated. It is understood that upon delivery of Certificate of Membership Card to me bearing date of acceptance by the Board of Trustees of this application; I agree to abide by all Rules and Regulations and the By-Laws of the Corporation

Check Basis of Service and Method of Payment

Family basis Individual basis Deduct from check _____
\$1.65 \$1.10
each pay day each pay day Will pay personally _____

In the event I have indicated payments to be made by deduction from salary check, I hereby authorize and request my employer to deduct semi-monthly the amount indicated and remit the same to the Group Health Association, Incorporated.

Dated at Washington, D. C., this — day of —, 193 —.

Applicant's Signature: — Date of Birth —

Home Address — Home Telephone No. —

Dept. — Room No. — Br. No. — Occupation —

NOTE: The Board of Trustees of said Association reserves the right to reject any and all applications for membership.

Name and Address of family physician: —

Dependents to Receive Service

Name

Age

Relationship

Defendants offered that portion of H. R. No. 1662 of the House of Representatives appearing on page 16 thereof, marked Def. Ex. 20, reading as follows:

"Mr. Woodrum, for the Committee on Appropriations, submitted the following report:

" 'Group Health Association contribution, Home Owners' Loan Corporation—Entirely irrespective of the merits of the work proposed to be done under the Group Health Association, for which the Home Owners' Loan Corporation recently made a contribution of \$40,000, the committee is of the unanimous opinion that the expenditure was not one authorized by any law and that such expenditures should not hereafter be made without specific legal authority."

Defendants offered in evidence the complaint in Equity Cause No. 66293 in the District Court, marked Def. Ex. 58 as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA HOLDING AN EQUITY COURT

In Equity. No. 66392

GROUP HEALTH ASSOCIATION, a Corporation, Fed. Home Loan Bank Bldg., Plaintiff,

v.

J. BACH MOOR, Superintendent of Insurance for the District of Columbia, and David A. Pine, Acting United States District Attorney for the District of Columbia, Defendants

Petition for Declaratory Decree

Plaintiff, for its cause of action, states:

1. That it is a corporation duly organized and existing under the laws of said District of Columbia, with its place of business in the City of Washington, District of Columbia.

2. That defendant, J. Bach Moore, is Superintendent of Insurance for the District of Columbia, and defendant, David A. Pine, is Acting United States District Attorney for the District of Columbia, both with offices located in said District of Columbia.

3. That on February 24, 1937, plaintiff was duly incorporated as a non-profit mutual improvement society in the District of Columbia, pursuant to Section 121, Chapter 5, Title 5 of the Code of the said District. Copies of the Certificate of Incorporation with Amendments and the By-Laws of said corporation are hereto attached and made a part hereof and for identification marked Plaintiff's Exhibits "A" and "B", respectively.

4. That the membership in plaintiff corporation is composed solely of employees of the Federal Home Loan Bank Board, affiliated groups and of other civil employees of the executive branch of the United States Government in the City of Washington, District of Columbia. Such employment is a prerequisite to membership in plaintiff corporation and termination of such employment automatically terminates membership therein. Membership is wholly voluntary and may be terminated by any member, at any time, upon the giving of one month's notice to plaintiff.

5. That the purpose of plaintiff corporation is as stated in its Certificate of Incorporation, as follows:

"To provide, without profit to the corporation, for the service of physicians and other medical attention and any and all kinds of medical, surgical and hospital treatment to the members hereof and their dependents, and the construction and operation of a clinic and medical office building; and the construction and operation of a hospital in the manner permitted by law, for the members hereof and their dependents, and the operation of a drug store or pharmacy, and the providing of nurses and of drugs and remedies for the members hereof and their dependents, and the furnishing of all forms of hospital service and attention to the members hereof and their dependents, and in general the giving to the membership of this association and their dependents of all forms of care, treatment or attention that may be required by the sick or in the prevention of disease."

6. That plaintiff has, on behalf of its members, expended the sum of approximately twenty-five thousand (\$25,000.00) dollars in setting up and equipping a modern clinic for the said members at 1328 Eye Street, Northwest, in the City of Washington, District of Columbia, and has, on behalf of its members, retained physicians, duly licensed in the District of Columbia, on salary to serve its members at that address, at hospitals, and at the homes of such members.

7. That oral contracts, on behalf of its members, have been entered into by plaintiff with the physicians aforesaid. A draft of the written contracts proposed to be entered into has been forwarded to the Medical Society of the District of Columbia for approval, and a specimen copy of such contracts is attached hereto, made a part hereof, and marked Exhibit "C" for identification.

8. That plaintiff, on behalf of its members, has arranged hospitalization for its members in various hospitals operating in the District of Columbia so that its members may receive adequate service at all times, for which the corporation pays.

9. That plaintiff, through said practitioners and institutions with whom it has made arrangements, as aforesaid, has, since November 1, 1937, made available the following services to its members, in accordance with Article 10, Section 1 of its by-laws, to-wit:

"Medical and surgical examinations and treatments, including examinations in special departments, such as refractions of eyes, laboratory tests, x-ray examinations, surgical operations, confinement cases and professional consultations, nursing and ambulance facilities, house calls, and hospitalization in a semi-private room (two-bed room) or a private room, limited in either case to a period not to exceed 21 days for any one illness; provided, however, that each member desiring to occupy a private room shall reimburse the corporation for so much of the cost of such room as shall exceed the sum of \$4.00 per day; provided, further, that such member shall make such payments to assure such reimbursement as the corporation shall require, and provided, that the benefits provided outside of the territory of the association shall be limited to the provision of a hospital room for the time and as is herein provided.

"The extent that medical service relating to the foregoing items will be furnished to members shall be determined and prescribed by the Medical Director or his representatives in each individual case."

10. That members of the plaintiff corporation pay for the said services arranged for by said plaintiff, as aforesaid, a fixed sum per month, there being two types of membership, namely, individual membership at two dollars and twenty cents (\$2.20) per month, and a membership of three dollars and thirty cents (\$3.30) per month which entitles a member to said services for himself and his listed dependents as outlined in plaintiff's by-laws.

11. That the business of plaintiff is managed by a Board of Trustees composed of eleven members thereof elected by the members of the plaintiff corporation in accordance with its by-laws, but the physicians employed by it on a salary basis and compensated out of the dues paid into the corporation by its members, are, under the direction of a Medical Director, a physician duly licensed in the District of Columbia and elsewhere, completely in charge of all medical attention given or necessary to be given to the individual members of plaintiff corporation and their dependents; that plaintiff is a non-profit corporation, organized and controlled by its members, who, in order to procure for themselves and their dependents adequate medical care, are simply cooperating, in corporate form, to that end.

12. That on or about January 15, 1938, notice was given by the defendant, David A. Pine, Acting United States District Attorney for the District of Columbia, to the plaintiff that, unless operations were immediately suspended and the affairs of the plaintiff were wound up, a bill for injunction or legal proceedings looking to the involuntary dissolution of the plaintiff corporation would be brought against the plaintiff on the ground that it, said plaintiff, is illegally engaged in the practice of medicine, as the same is defined by the Healing Arts Practice Act in the District of Columbia, and is illegally engaged in the insurance business within the meaning of Title 5, Chapter 7, Section 179 of the Code of Laws of the District of Columbia.

13. That on or about January 15, 1938, notice was given by the defendant, J. Bach Moor, Superintendent of Insurance for the District of Columbia, to the plaintiff that it, said plaintiff, is improperly incorporated under the laws of the District; that it is illegally engaged in the insurance business within the meaning of Section 179, Chapter 7, Title 5 of the Code of the District of Columbia; that it must reincorporate as an insurance company and comply with all provisions of the laws of the District of Columbia as to reserves, etc., applicable to such insurance companies, and that, unless these demands are immediately satisfied by said plaintiff, injunctive or other available legal proceedings will be brought to end the operations of said plaintiff.

14. That said plaintiff denies such charge in every particular and specifically denies that it in any sense practices medicine, illegally or otherwise, under said Healing Arts Practice Act of the District of Columbia, and in no manner commercializes the practice of medicine in contravention of law or public policy; it further specifically denies that it is engaged in the insurance business in the District of Columbia and further denies that it must in any way comply with insurance laws of the District of Columbia, and states that it makes no payments of indemnity and insures against no hazard or peril. Plaintiff alleges that in threatening the actions aforesaid the defendants are acting beyond the scope of their legal authority, and plaintiff refuses to comply with the demands of said defendants, or either of them, that is, the plaintiff, suspend its operations or comply with further demands of said defendants, or either of them.

15. That, if defendants take the action threatened, plaintiff will be irreparably injured; its business, its peace, and its freedom in the operation thereof, will be interfered with; that such action, if taken, threatens a valuable property right and franchise, raises doubt, insecurity in plaintiff's operation of its business, impairs and jeopardizes its business, property rights and franchise, and threatens the investment in equipment heretofore made by plaintiff, as hereinabove more fully described.

16. That, by reason of each and all the facts aforesaid, plaintiff's only remedy, in order to avoid suffering irreparable damage by reason of the action that is impending on the part of the said defendants, is to bring suit in Equity, praying a declaratory judgment or decree upon the part of this Court relative to the actual controversies hereinabove set out, and a declaration of the rights and other legal relations of the parties hereto with reference to the validity of Group Health Association, Incorporated.

Wherefore, plaintiff prays that this Court render a declaratory decree or judgment, defining the status of Group Health Association, Incorporated, and declaring the same to be in no sense illegally or otherwise engaged in the practice of medicine or engaged in an insurance business, that this Court render a declaratory judgment that, under the correct construction of the insurance statutes of the District of Columbia and the Healing Arts Practice Act of the District of Columbia, the plaintiff is entitled to continue its operations; that defendants, or either of them, are without authority to prohibit or interfere with the legal operations of plaintiff; and that the Court grant to plaintiff such other and further relief as justice may require, or to the Court may seem meet and proper in the premises.

Group Health Association, a Corporation, by W. C. Kirkpatrick, President.

Horace Russell, Luke E. Keeley, A. Blaine York, B. K. Newmann, Attorneys for Petitioner—all of Federal Home Loan Bank Board Building, Washington, D. C.

DISTRICT OF COLUMBIA ss:

W. C. Kirkpatrick, being duly sworn on oath, says he is President of Group Health Association, Incorporated, peti-

tioner herein, and makes this affidavit in its behalf; that he has read the foregoing petition subscribed by him in behalf of said petitioner and knows the contents thereof and that the matters and things therein stated as of his own knowledge are true and those stated upon information and belief he believes to be true.

W. C. Kirkpatrick.

Subscribed and sworn to before me this January 27, 1938. Dorothy I. King, Notary Public, D. C. My commission expires June 1, 1942.

Defendants offered in evidence the file in Civil Action No. 2474 in the District Court, marked Def. Ex. 59 as follows:

DISTRICT COURT OF THE UNITED STATES FOR DISTRICT OF
COLUMBIA

Civil Action No. 2474

IRENE KRAMER, 3505 14th Street N. W., Washington, D. C.
Plaintiff,

v.

GROUP HEALTH ASSOCIATION, Inc., a Body Corporate, 1427
Eye Street, Northwest, Washington, D. C.

and

RICHARD H. PRICE, 1328 Eye Street, Northwest, Washington,
D. C., Defendants

Complaint

(for damages for malpractice and negligence)

1. The Plaintiff, Irene Kramer, a resident and citizen of the District of Columbia, sues the defendants, Group Health Association, Inc., a body corporate doing business in the District of Columbia, and Richard H. Price, a doctor of medicine practicing in the District of Columbia, for damages for personal injuries she sustained as a result of defendants' negligence in their prescription and administration of certain medical treatments hereinafter more particularly described. The plaintiff was, on the dates of the

grievances herein complained of, a member of defendant incorporated association and has performed all the necessary conditions before bringing this suit and has exhausted to no avail all her legal remedies within the said corporation as provided by the by-laws thereof.

2. The Group Health Association, Inc., and Richard H. Price are sued herein as co-defendants and plaintiff says that all acts complained of herein which were committed by any of their agents and/or employees upon the premises were committed with the knowledge, consent, approval and direction of both defendants, and that the defendant Price was at the times and places of all the grievances herein complained of in the employment of the technical, diagnostic, and all other medical services to members of said corporate defendant in need thereof, including the said plaintiff, for which the defendant Price was paid a salary by the corporate defendant.

3. In the early part of October, 1938, plaintiff visited the clinic of the corporate defendant and consulted with defendant Price about a certain skin irritation on the back of her neck. The defendant Price recommended and arranged for ultra-violet ray lamp treatments and thereafter, until the week of December 26, 1938, plaintiff received, at said clinic, these ultra-violet ray treatments at the rate of twice each week.

4. During the week of to-wit December 26th, 1938, defendant Price recommended and arranged for a "cold quartz" ray treatment for plaintiff and which treatment was given plaintiff at said clinic. On to-wit December 30th, 1938, plaintiff, at the instructions of defendant Price, was given another such treatment.

5. There was then and there, from the date of first treatment, to the date of last treatment, to-wit, December 30, 1938, a duty upon the said defendants, their employees and/or agents, to exercise great care, prudence, skill and science in the treatment of all members of the corporate defendant including said plaintiff, but nevertheless, in violation and breach of said duty, the defendant Price and the employees and/or agents of said defendants negligently and carelessly prescribed and administered the above-mentioned treatments and plaintiff says that defendants were negligent not only in the prescription of the method of treatment but

also in the administration of such treatment, in that, to-wit, the use of the cold-quartz lamp used twice during the week of December 26, 1938, was negligent, careless and incorrect both in the period of time during which plaintiff was exposed to the rays thereof and also in the distance said lamp was placed by defendants from the plaintiff, and also in the mere use of such lamp for such ailment.

6. That as a result of defendants' negligent and careless acts as aforesaid, plaintiff, on to-wit December 30, 1938, suffered a severe burn of the skin of her face, neck, shoulders and both arms, and was rendered severely ill in great pain and agony and was compelled to remain confined in bed and at home for a long period of time, to-wit, from December 31, 1938, to February 2, 1939, during which time she lost much sleep because of the intense pain as aforesaid and was unable to attend to her ordinary and usual affairs and during that time she was compelled to remain home from work at her position in the Home Owners Loan Corporation where she was employed as a stenographer at the salary of \$32.50 per week.

7. Because of the injuries received as aforesaid, plaintiff became obligated to spend certain sums of money for medical attention and services rendered and will be compelled to continue such expenditures in attempting to cure the aforesaid injuries, all of which is estimated as follows:

Medical expenses to date	\$70.00
" " future estim.	70.00
Loss of earnings	130.00
Pain & suffering, etc.	4,730.00
Total	\$5,000.00

8. Plaintiff anticipates that defendants will defend this action in part on the ground that plaintiff was allergic to the above-described treatments, and plaintiff says that defendants have never made any proper dermatological or other proper tests to ascertain such condition and plaintiff further says she was not on the dates of said treatments allergic thereto.

Therefore, plaintiff claims judgment against Richard H. Price or against Group Health Association, Inc., or

against both defendants in the sum of \$5,000.00, besides costs.

(Signed) Morris D. Schwartz, Attorney for Plaintiff,
635 F Street N. W. Rep. 3380.

Jury Demand: Plaintiff demands jury trial of all issues herein involved.

(Signed) Morris D. Schwartz, Attorney for Plaintiff.

Defendants offered in evidence the file in Civil Action No. 6436 in the District Court, marked Def. Ex. 60 as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

No. 6436

BEATRICE KENNEDY, Executrix Under the Last Will and Testament of Monte R. Kennedy, Deceased, 6701 44th Street, Chevy Chase, Maryland, Plaintiff,

v.-

GROUP HEALTH ASSOCIATION, INC., a Corporation, 1427 Eye Street, N. W., Washington, D. C.

LOUIS B. BACHRACH, Farragut Medical Building, Washington, D. C.

CHARLES J. ALBRIGHT, % Group Health Association, Inc., 1427 Eye Street, N. W., Washington, D. C.

GERALD LONG, % Group Health Association, Inc., 1427 Eye Street, N. W., Washington, D. C., Defendants

Complaint for \$10,000.00 Damages by Reason of Death by Wrongful Act

1. This is a suit for damages in the amount of \$10,000.00 on a claim of death by wrongful act.

2. That prior to the 6th day of August, 1939, plaintiff's intestate became and was a member of Group Health Association, Inc., a corporation duly organized under the laws of the District of Columbia. That by virtue of his member-

ship in said Association, plaintiff's intestate was entitled to receive, and said defendant, Group Health Association, Inc., agreed to provide, certain medical and surgical care and attention, including hospital, medical and nursing services incident thereto should plaintiff's intestate be in need thereof.

3. That on, to wit, the 6th day of August, 1939, plaintiff's intestate became ill and in accordance with the agreement aforesaid, applied to the said defendant, Group Health Association, Inc., for medical care and attention in accordance with the agreement aforesaid; that at that time plaintiff's intestate was suffering from an illness or ailment which required immediate medical care and attention. That defendant, Group Health Association, Inc., undertook to furnish said medical care and attention in accordance with its agreement aforesaid, and in doing so, negligently and carelessly provided such medical care and attention; that it furnished incompetent medical care and attention; that it supplied or furnished the services of the defendant, Charles J. Albright and the defendant, Gerald Long, both regularly employed by said defendant, Group Health Association, Inc., as physicians or surgeons; that the defendant Dr. Albright and Dr. Long, as agents, servants and employees of the defendant, Group Health Association, Inc., negligently and carelessly diagnosed intestate's ailment or illness, and negligently and carelessly failed to enter said intestate in a hospital as was necessary in order to provide for proper and immediate surgical care and attention and negligently and carelessly prescribed for or otherwise professionally treated said intestate; that on, to wit, August 7, 1939, when the said defendant, Group Health Association, Inc., did enter said intestate in a hospital it supplied and provided the services of the defendant, Louis B. Bachrach and that said defendant, Bachrach negligently and carelessly diagnosed intestate's ailment or illness and negligently and carelessly failed to operate on plaintiff's intestate at a proper time and negligently and carelessly treated plaintiff's intestate during said illness or ailment.

4. As a result thereof plaintiff's intestate languished and died.

5. Plaintiff's intestate left surviving him his widow, Beatrice Kennedy, and the following children: Evelyn Lee

Jane Kennedy, Richard Clark Kennedy and Monte Ray Kennedy, Jr., who are his next of kin and who are entitled to have maintained on their behalf this action for death by wrongful act in accordance with the statute made and provided.

Wherefore, the plaintiff demands judgment against Group Health Association, Inc., Louis B. Bachrach, Charles J. Albright, and Gerald Long, or against each of them, in the sum of \$10,000.00 and costs.

Henry I. Quinn, Austin F. Canfield, Attorneys for Plaintiff, 637 Woodward Bldg., Washington, D. C.

Comes now the plaintiff in the above-entitled cause, by her attorneys, and makes demand that the issues herein made be tried by a jury in accordance with Rule 38 of the F. R. C. P.

Henry I. Quinn, Austin F. Canfield, Attorneys for Plaintiff.

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Answer of Defendant, Louis B. Bachrach

Defense Number 1

1. For answer to the complaint filed herein, the defendant, Louis B. Bachrach, says that the plaintiff fails to state grounds upon which relief can be granted.

Defense Number 2

1. For further answer to complaint filed herein against him, the defendant, Louis B. Bachrach, says that he has no knowledge of any contractual relation existing between plaintiff's deceased husband and Group Health Association, Inc.

2. He denies that the defendant, Group Health Association, Inc., supplied and provided the services of this defendant to the plaintiff's deceased husband, but says that Dr. Gerald Long called him to render surgical services, if needed, to the said plaintiff's deceased husband.

3. This defendant denies that he was negligent as alleged in said complaint.

4. This defendant denies paragraph 4 of the plaintiff's complaint.

5. This defendant has no knowledge of the allegations contained in paragraph 5 of said complaint and can therefore neither admit nor deny the same.

Harry H. Bettelman, Attorney for Defendant, Louis B. Bachrach, 1104 National Press Bldg., District 0484.

Service of a copy of the foregoing answer of Defendant, Louis B. Bachrach, made upon Henry I. Quinn and Austin F. Canfield, attorneys, for plaintiff, by mailing same to them at their last known address, 637 Woodward Building, Washington, D. C., through the U. S. Mail, postage prepaid, this 22nd day of April, 1940.

Harry H. Bettelman, Attorney for Defendant, Louis B. Bachrach.

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Answer of Defendants Charles J. Albright and Gerald Long
Defense No. 1

The complaint fails to state grounds upon which relief can be granted against these defendants.

Defense No. 2

1. These defendants state that they are without sufficient knowledge or information to enable them either to admit or deny the allegations of paragraph 2 of the complaint.

2. They admit that plaintiff's decedent became ill on August 6, 1939 and state promptly upon having the fact brought to their attention they rendered him necessary medical care and attention. They deny that they negligently and carelessly provided such medical care and attention, or that such care and attention was incompetent, and state that they were then physicians duly licensed to practice their profession in the District of Columbia. They deny that they or either of them were agents or servants of Group Health Association, Inc., and state they were independent contractors under the terms of their respective contracts with said association. They deny that they or either of them negligently and carelessly diagnosed the illness of plaintiff's decedent, or negligently and carelessly failed to enter plaintiff's decedent in a hospital in order to provide for proper and immediate surgical care and atten-

tion, or negligently and carelessly prescribed for or otherwise treated said decedent. They deny that the services of the defendant, Louis B. Bachrach were supplied and provided by Group Health Association, Inc., and state that said Gerald Long in his professional capacity and as such independent contractor engaged the services of said Bachrach. They deny that the defendant, Louis B. Bachrach was negligent as alleged in paragraph 3 of the complaint.

3. They deny the allegations of paragraph 4.

4. They are without sufficient knowledge or information to enable them to either admit or deny the allegations of paragraph 5 of the complaint.

James Sherier, 910 17th St., N. W., Washington, D. C., and E. K. Neuman, 1422 K St., N. W., Washington, D. C., Attorneys for Defendants.

Service of copy of the foregoing Answer made upon Henry I. Quinn and Austin F. Canfield, attorneys for plaintiff, by mailing same to them at their address, 637 Woodward Building, Washington, D. C., this 29th day of May, 1940.

James Sherier.

Answer of Group Health Association, Incorporated

Defense Number 1

The complaint fails to state a claim against this defendant upon which relief can be granted.

Defense Number 2

1. This defendant admits that prior to August 6, 1939, plaintiff's decedent became and was a member of Group Health Association, Inc.; but it denies that by virtue of said membership it agreed unqualifiedly to provide him medical, surgical and other service; as alleged in the complaint. On the contrary it states that the undertaking of this defendant with plaintiff's decedent, as constituted by the by-laws of said Association, was that in consideration of certain dues paid by him to it (1) it would enter into contracts for and on his behalf with physicians duly licensed to practice their profession in the District of Columbia to

render such medical and surgical care and attention as might be needed by him and as described in and limited by said by-laws; (2) that it would not regulate or supervise the practice of medicine by any physician with whom it contracted on his behalf, or supervise, regulate or interfere with the usual professional relationship existing between him and such physician; (3) that it did not guarantee that it would provide any or all of the services for which it would attempt to contract on his behalf; (4) that it would not be liable to him in any manner whatever if it should be unable for any reason to procure any or all of said services when called upon to do so; (5) that it did not guarantee that any physician with whom it might enter into a contract to render such service on his behalf would perform such contract or perform it properly; (6) that its only obligation in the event of the breach of such contract by any physician was, on his request, to use its best efforts to procure the needed services from another source; (7) and that it would not be liable to him for any act of omission or commission on the part of any physician with whom it might contract for the rendering of services to him.

2. This defendant admits that plaintiff's decedent became ill on August 6th, 1939, and states that promptly upon his request it provided him with necessary medical care and attention according to its undertaking. It denies that it negligently and carelessly provided such medical care and attention; or furnished incompetent medical care and attention. On the contrary it states that it furnished the services of the defendants, Charles J. Albright and Gerald Long, both of whom were then physicians duly licensed to practice their profession in the District of Columbia. It denies either of the said physicians was the agent or servant of this defendant, but alleges that both of them in their relationship to this defendant and plaintiff's decedent were independent contractors under the terms of their respective contracts with this defendant; that it denies that either of said physicians negligently and carelessly diagnosed the illness of plaintiff's decedent, or negligently and carelessly failed to enter plaintiff's decedent in a hospital in order to provide proper and immediate surgical care and attention, or that either of them negligently and carelessly prescribed for or otherwise professionally treated plaintiff's decedent; and that it denies that it provided the services

of the defendant, Louis B. Bachrach, but states that said Gerald Long in his professional capacity and as such independent contractor engaged said Bachrach and this defendant denies that said Bachrach was negligent as alleged in the complaint.

3. It denies the allegations of paragraph 4 of the complaint.

4. It is without sufficient knowledge or information to enable it either to admit or deny the allegations of paragraph 5 of the complaint.

James Sherier; 910 17th St., N. W., Washington, D. C., and E. K. Neuman, 1422 K St., N. W., Washington, D. C., Attorneys for Defendant.

Service of copy of the foregoing Answer made upon Henry I. Quinn and Austin F. Canfield, attorneys for plaintiff by mailing same to them at their address, 637, Woodward Building, Washington, D. C. this 29th day of May, 1940.

James Sherier, Attorney for Defendant.

Mr. Richardson: Has your Honor as yet announced any ruling on the question held in abeyance, as to whether evidence would be admitted to show that subsidies were granted to GHA with the knowledge of the defendants?

The Court: My statement is that I have reached my conclusion and do not consider the evidence admissible; therefore, I sustain the Government's objection to that line of evidence. I might briefly indicate my reasons, which are two-fold.

First, I do not regard the financial and economic affairs of GHA as material to the issues of the case; secondly, as to its bearing upon the question of the Medical Society's approving GHA, there is nothing to show that at the time of any action by the Medical Society, or any of its committee or representatives, they knew of any subsidy or financial assistance being given by these organizations. Hence, it could not in any wise enter into their considerations.

So far as the evidence now shows, there is nothing to indicate that the defendants knew anything of these alleged subsidies up until the time that the evidence was produced here.

Mr. Richardson: I feel I should say part of our offer is to prove knowledge.

The Court: Where would it go back to?

Mr. Richardson: In the first place, the evidence in the record as it stands now is replete with statements from the very start that this thing was financed by the Twentieth Century Fund.

The Court: The evidence shows that there was no financial assistance given to them until August, 1938.

Mr. Lewin: That is right.

The Court: How do you reconcile that? You don't claim that they gave them any financial assistance, do you—any of those organizations?

Mr. Richardson: Oh, yes, because we have the evidence of Mr. Rickcord, who was the man who actually set it up. They paid his full salary from December 1, 1936. He was instrumental in setting it up. They paid his office rent, paid his clerks. They paid his rent for the administrative offices of GHA.

The Court: I may not have a correct understanding of that. I do recall that there was testimony of one of the doctors in the early stages of the matter that indicated that Mr. Rickcord had something to do with it.

Mr. Lewin: I think it is in evidence that he talked to Mr. Rickcord generally about the plan.

The Court: I will put my decision upon a broad basis, and that is the first ground.

The second ground is put as secondary, and I thought I was correct in my understanding of it.

I do recall that there is something in the evidence—I think it came out in the Government's evidence, perhaps, showing losses—indicating what may be termed a suspicion that the Filene Fund was back of it; but when you take your offer of evidence now, which indicates that no actual financial assistance was given, no actual support to the organization itself after it got started was given until August, 1938, I do not see how that could bear upon anything that was done by the defendants previous to that time.

Mr. Burke: In the annual report of the Twentieth Century Fund, which Mr. Brown identified, it is set forth that from December 1, 1936, they contributed financially and were instrumental—

The Court: I do not think it is material. I think the first ground is inclusive.

Then, of course, I have always had this in mind, with reference to this so-called matter of approval by the Medical

Society. I think the Medical Society had a right to approve or disapprove as it pleased, if it saw fit.

Mr. Richardson: I wonder whether that might not have to be urged here.

The Court: They had the same right to approve or disapprove as I would have or anyone else would have. Now, if their action went no further than disapproval, that was not conspiracy; if it went further—if disapproval was supported by affirmative action in the nature of a conspiracy to do things to restrain, then you would have a conspiracy. But mere disapproval is merely the exercise of one's right to think and to say what he thinks, and that does not involve conspiracy. It may be a motive for conspiracy, don't you see, but of itself it is not conspiracy.

Mr. Richardson: The reason for it would not be an issue in your mind?

The Court: It is only evidence as showing motive, as showing background. It is just the same as though one of us went out and shot somebody. Evidence of dislike or personal animosity toward that person is evidence of motive.

Mr. Richardson: The only thing we are exercised about is that we fear we are going to be severely catechized as to the reasons why we disapproved, and we feel that we are shut out, on our side, from showing the reasons why we did disapprove.

The Court: I think you have that proof in, and also the documentary evidence.

I may say, so that there will be no misunderstanding about it, that I do not think, in view of my keeping out this evidence, which I consider immaterial upon the ground that I think the financial structure of GHA is irrelevant, that anything should be argued by the Government that they were a financially stable, sound concern. If you are going to make an argument of that sort on the one hand, then, of course it is going to open up the question.

Mr. Kelleher: I am sure we have no intention of doing that.

The Court: I do not see any ground now on which you would be justified in making any such observations, for the simple reason, as I say, that I consider it immaterial. But if you are, it might create an embarrassing situation, and I might have to reveal the fact, or the defendants might, that this evidence here indicating need of financial help was offered and was rejected by me.

I have known in this Court of breaks of that sort to be made in argument, and the Courts have re-opened the case to let in the evidence.

Mr. Richardson: We have some doubt as to whether the offer of proof should not be re-drawn and be amplified, unless the Government is willing that the record should show by stipulation that no point is made as to the form of the offer and that the Government does not make any point that we have not called the witnesses or produced the documents and, under oath, attempted to elicit the testimony.

The Court: I understood we had all agreed upon that, that we were not going through the useless formality of producing witnesses. When you made your written offer to prove these things, we all accepted the assurance that the witnesses would be available and that testimony could be offered tending to prove it. In making my ruling I assumed that such proof was available.

Mr. Lewin: We are in agreement with that statement, when you couple your offer with your oral statements in answer to the Court's inquiries.

The Court: I made a little note of that. I thought that was necessary. I noticed the same thing that you were speaking of when I was writing my memorandum. You will recall that at the bottom of it, in order to protect myself, there is this paragraph (reading):

"The offer of proof, as I have treated it, is the written paper filed March 14, 1941, as orally amended, revised and explained by counsel for the defendants. Many of the documentary items contained in the written offer are already in evidence. They can be dealt with later in keeping with this decision."

Certainly I will protect you in any way that is necessary.

Mr. Richardson: I did not want to be met with the idea that there had been some technical failure to complete the offer.

There is one further thing that ought to be fixed up. A number of these papers that were turned over to the court were already in evidence, such as the regulations and by-laws. The contract with H. O. L. C. and such contract as there was between Group Health Association and its members have never in fact been offered in evidence. It might

be well to have a stipulation that they can be put in the record and then be objected to—

The Court: They should all be in.

Mr. Richardson: And then be ruled out?

The Court: They are ruled out under this. I have assumed you had them available. Of course, for purposes of the record, if the case should go up on appeal, they should be identified in the record, so that you would have them in if you should ever need to appeal, you see.

Mr. Richardson: Would there be any difficulty in taking the H. O. L. C. decision and these other various documents and having you identify them, satisfying yourself that they are the papers, and then have us offer them and have them ruled out under this?

The Court: They are offered in your offer of proof, but they are not identified in the record.

Mr. Richardson: Oh, yes. You mean, given an exhibit number.

Mr. Lewin: Just give them a number and state that they are the ones.

The Court: So that finally, if you should ever have to go up, in making up your record you will have those papers. It would be a matter of identification, now, because I have treated them in the offer when I considered them. You two can get together on that and just identify them and have the stenographer mark them in any way you say they should be marked, defendants' exhibit so and so far identification. If you want to, you can put on it "Part of the proof in defendants' offer of proof of March 12," or whatever date it was.

Mr. Richardson: I suppose the offer of proof itself ought to be in.

Mr. Kelleher: I think it is in.

Mr. Richardson: It is not in the transcript. It ought to be in the transcript.

The Court: You may have it copied in, if you wish.

Mr. Laskey: Is it not a mere matter of identifying the particular pamphlets and papers that you ruled on?

The Court: Exactly so. If you want to you can add to the identification that it is one of the documents contained in the offer of proof, as a further identification. That offer of proof is actually filed.

Mr. Burke: Would it be all right to put it into the transcript?

The Court: Surely.. Anything you want to pay for can go into the transcript.

Mr. Lewin: In reference to the things already in evidence that touch on that point, I understand that your Honor's ruling that that subject was immaterial would go to such matters as are already in the record that would support it, and that it could not be argued to the jury?

The Court: Yes. Of course those things that were admitted may bear upon other questions.

Mr. Lewin: Yes. I think there were letters that had things in them that were admissible, and then another paragraph about something else.

The Court: That is what I mean when I say they may be dealt with in the future as circumstances may require.

Mr. Lewin: This is the point I want to make. I was concerned with your Honor's observation about argument. We cannot expect defense counsel to urge illegality as justification by referring to what was in the record to support it.

The Court: No, because if they did I would simply have to rule them out of order.

Mr. Burke: In considering that offer of proof you said that this went in and that went in, and others were under consideration. I take it you meant by that that the things you indicated you wanted in evidence, for instance, the contract—

The Court: This (indicating) is the defendants' offer of proof. I referred to it as such in my memorandum which was filed March 14. When I looked at this overnight I saw that some of these things were in, but I wanted to be sure that all were before me which were necessary for me to consider, so that whatever ruling I made would be supported by the offer, you see. In arriving at my conclusions they are before me; and they are not before the jury. I assume them to be true for the purposes of my ruling. So I went over this and we agreed that this and that were in, and this was to be in. In other words, it was not in but it was to be in. One of them I have marked with a question mark.

Mr. Richardson: I think we understand it perfectly now.

Mr. Burke: I asked your Honor whether you intended that the contract of H.O.L.C. should be read in evidence or not.

The Court: No; I am excluding it. It is not to be read in evidence.

Mr. Richardson: It is to be offered as an exhibit and numbered, and then ruled out.

The Court: It is to be marked Defendants' No. so and so for identification.

Mr. Richardson: So that we will know what instrument ties up with the offer of proof.

The Court: And then this general ruling of mine will exclude it. If it is already in it will stay in to be dealt with appropriately later. If it is in, it is on some other ground. I think we understand each other. If you have not got an understanding about it I will clarify it.*

The objections of the United States to all of the foregoing offers and re-offers of proof of the defendants (pages 1363-1435 supra) were sustained, and all of the foregoing offers and re-offers of proof were rejected by the Court with an exception to the defendants.

REBUTTAL TESTIMONY ON BEHALF OF THE UNITED STATES

MRS. CHARLES HARDIN, a Witness for the Government.

Direct examination.

By Mr. Kelleher:

On June 19, 1938, my husband became sick with appendicitis, and Dr. Solet was called by me. Mr. Hardin was taken to the hospital and operated on. When Dr. Solet came into the house I had a conversation with him concerning Group Health, and he said Group Health doctors were not permitted to operate in the hospitals and therefore suggested calling another surgeon, to prevent a waste of time. I said we were members of Group Health, and we wanted to know about who should operate. Dr. Solet suggested Dr. Bachrach. When Dr. Bachrach came, Dr. Solet said, "These people are members of Group Health, but I have told them Group Health doctors are not permitted to operate."

And Dr. Bachrach said, "That is right."

* (The Court's written opinion covering similar offers and referred to by the Court, herein appears, pages 945-948, supra.)

I conducted negotiations with Dr. Solet about Dr. Bachrach coming in and seeing the patient. My husband did not participate in them at all, other than he said whatever I said was all right, and whatever occurred that evening there with Dr. Solet and Dr. Bachrach was done in my presence.

Cross-examination.

By Mr. Leahy:

I remember that Dr. Solet mentioned some other names of several doctors, but I only recall Cafritz at this time. Others were mentioned, two others.

DR. MARIO SCANDIFFIO, a Witness for the Government.

Direct examination.

By Mr. Kelleher:

My present position is that of medical director of Group Health. I am a doctor of medicine. I received my medical degree from George Washington University in 1928 and spent three years of internship and residency at the New York Post Graduate School and Hospital, and since then I have been in private practice in pediatrics. I joined Group Health on November 1, 1937, as a pediatrician. Dr. Henry Brown was medical director when I came.

It was customary during 1938 for the Group Health clinic to keep records of the number of patients seen by doctors on the staff. Each doctor listed his patients "seen" in a book. From this book daily and monthly summaries were made by the clerical staff. Those records are under my control now as medical director. I have the monthly summaries showing treatments by Dr. Richard Price. I have all the daily summaries, except the month of September, 1938, which is missing. All records, both daily and monthly, of that month are completely missing. I have a daily record showing the treatments of Dr. Price for the rest of the year 1938—that is, with the exception of about 13 days throughout the year, for which I could not find any records.

The largest number of patients seen by Dr. Price in one day as shown by these records, was 51. The next highest

number grades down to 34. There are exactly 17 days out of the entire year 1938 when Dr. Price saw more than 34 patients a day: that is, had 34 names of patients listed in his record; and outside of the 18 days during that period Dr. Price saw less than 34 patients a day. The average number of patients listed in Dr. Price's record for the entire year of 1938 was 18. The list of patients seen usually included, and did include with the exception of Dr. Price, those patients seen in the office, home, or hospital each day. I mean by the exception that Dr. Price listed in his record telephonic conversations, the names of patients who accosted him in the hall, and the names of patients who received services from him such as injections, interpretation of X-ray plates, fluoroscopic examinations, and X-ray skin treatments performed by Mrs. Davis, the X-ray technician, under his supervision.

Dr. Price took an average of one to two minutes for an ordinary chest and skeleton interpretation of an X-ray and an average of about five minutes for a gastro-intestinal series and gall bladder series. Dr. Price did not spend more than two minutes per patient on skin treatments; that is, administering X-ray dosages. The actual time spent by him was just a fraction of a second. The preparatory work was done by the X-ray technician. The average time spent in fluoroscopic examinations wasn't more than five minutes, and that includes preparation of the patient. The actual examination was probably less than one minute.

The monthly averages of Dr. Selders while Dr. Brown was medical director were 533 in January, 481 in February. Dr. Selders' daily average was 20 a day.

Dr. Hulburt in January saw 644 patients and in February 428 patients. His average for the day was 22.

Dr. Price in January saw 333 patients and in February 375 patients. His average was 15 a day.

There was no time during those two months, January and February of 1938, when any doctor in the clinic treated as many as 60 patients. Daily and monthly summaries of patients seen by various doctors in the clinic were kept in November and December, but they were only the total summary of patients seen.

While I was with GHA from November, 1937, until December, 1938, in my view Group Health most certainly supplied its members with adequate medical care, because we

could give the patient better and more adequate medical care than we could as private practitioners.

Cross-examination.

By Mr. Leahy:

I have the report for the patients treated from November 1, 1937, to May 31, 1938, and the summarization thereon is made from the records the clinic kept. And during that time we had on our staff Dr. Selders, Dr. Price, Dr. Scandiffo, Dr. Cahoon, and Dr. Dabney, although I am not certain about Dr. Dabney; Dr. Montgomery came in February, and the same applies for Dr. Edgington. Dr. Chase came in March. Dr. Marshall was only with us a day or two. Dr. Richardson was there from January through July, 1938. Dr. Cahoon came on at the time Dr. Hulburt resigned.

In the period from November 1, 1937, to May 1, 1938, the report shows that Group Health treated 19,130 patients. The report shows that the number of patients in the clinic was 19,130 for that period of time. The 19,000 and some odd included medical care, surgical, eye, ear, nose, and throat, pediatrics, obstetrics, also laboratory tests, physiotherapy treatments, basal metabolism, electric treatments, cardiographs, X-rays, and fluoroscopic examinations.

It shows that, and it is broken down into 6,218 medical cases, 2,443 surgical cases, 2,770 eye, nose, and throat cases, 2,179 pediatrics cases, 94 obstetrical cases, and 58 hospital cases, 1,308 home calls, 215 hospital calls, 248 cases with consultants, 3,464 physiotherapy cases, 1,735 ultraviolet-ray treatments, 1,729 short-wave treatments, 330 basal metabolisms, 66 electrocardiographs, 822 X-rays, 473 fluoroscopic examinations, 5,864 prescription cases, 5,528 laboratory and clinical laboratory report cases, 422 eye refractions, 16 eye, ear, nose, and throat cases in the clinic; treatments being given to 9,278 members and 9,013 dependents.

Many of our chest X-rays were simply routine procedures, not for the detection of pathology. If a plate showed pathology, the average time spent in interpreting it would be more. The average interpretation of a pathological X-ray plate should take at least five minutes. Pathology in a plate can be detected within a minute.

In testifying on direct examination and in testifying on the time of interpretation of these X rays I am not testify-

ing from the records. I didn't stand by and see each X ray taken but saw many taken by Dr. Price, but not every one. I watched him make some examinations and interpret some plates. There wasn't any routine in giving X-ray examinations, but they were given in most cases if the patient requested an X ray, and in cases that we thought required X rays and on chest X rays I say that Dr. Price spent an average of from one to two minutes, and on X rays involving the gastro-intestinal tract about five minutes, but there is nothing in the record to indicate how much time he spent on X rays, and my testimony is that in cases where I saw Dr. Price interpreting such X rays he would take a minute or two in ordinary cases, and in cases of gastro-intestinal X ray he would take four or five minutes. I saw roughly Dr. Price interpret about ten X rays a week. I can't give the daily average as I wasn't with Dr. Price every day. The actual time spent by Dr. Price on fluoroscopic examinations was a matter of seconds, a minute or two at most. I didn't attend and see Dr. Price making many fluoroscopic examinations, and I can't give you the weekly average on these.

Dr. Price also attended patients outside the clinic, on house calls. I can't break down on a daily average how many he saw; I would say it was roughly one or two a day. All our doctors would make calls on patients who were sick at home. I have no breakdown of the monthly home calls. I have the total for the period of February 1 to August 31; 1,308 home calls. Seven doctors in that period were making home calls in the District of Columbia, Virginia and Maryland. The hours at the clinic are from 9 to 6 on week days and 9 to 1 on Saturdays.

Dr. Price resigned in January, 1939. I do not have Dr. Price's book that contains his record and have never examined Dr. Price's book myself. I don't know that the only patients Dr. Price saw were those shown on the records from which I testified. I do know that the patients, the names listed and the numbers listed are the exact copies of his own records. I do know it, that the names listed do not agree with the number of patients seen by him. He saw less patients than are listed on his records.

Q. You mean that the records he made show as patients seen people in fact he did not see?

A. That is correct. I testified that he included telephonic conversations, casual meetings in the hall with patients, injections,—not injections—X-ray interpretations were listed as patients seen, when they were not seen.

I testified on direct that all throughout this period I believed that GHA was supplying adequate medical care to patients and that we could give better care to patients than we could in private practice. I know Dr. Wall very well and served with him a good while before joining Group Health. He was my preceptor, in a manner of speaking. Dr. Price, Dr. Selders, and I did not go to Dr. Wall and Dr. Macatee and offer to resign in a body from Group Health at the very time about which I am talking, because we couldn't give adequate medical care to patients. Dr. Price, Dr. Selders and I did go to Dr. Wall's home and talked with Dr. Wall, but we did not offer to resign, though we discussed the resignations of us from Group Health. At that time we did not state that we thought that all others on the staff of Group Health would resign also, and we did not ask Dr. Wall and Dr. Macatee to help us. We did not state what would happen if we all resigned at once and did not state that that would break up Group Health if we resigned in a body, but I did state that it might break up Group Health if we all resigned. I don't recall that Dr. Wall and Dr. Macatee said no, they couldn't do anything for us, as there was no occasion for an answer like that.

Redirect examination:

The conversation with Dr. Wall and Dr. Macatee occurred in the fall of 1938. When Dr. Wall and Dr. Macatee were seen by Dr. Selders, Dr. Price, and myself at Dr. Selders' request, Dr. Selders being thoroughly dissatisfied with his position, we discussed exactly what Mr. Leahy brought out in my testimony. We asked Dr. Wall to meet with the three of us. At the time of the meeting Dr. Selders and Dr. Price asked certain questions of Dr. Wall and Dr. Macatee, particularly regarding the Medical Society privileges and hospital privileges. The question of resignations was brought up, that is, the question of our resigning from Group Health staff was brought up at the time and discussed by all of us, but not in connection with hospital privileges and membership in the Medical Society. The question

of hospital privileges and Medical Society privileges was brought up by Dr. Selders and Dr. Price.

MRS. CAROLINE REECE EPPERLY, a witness for the Government (recalled).

Direct examination.

Gov. Ex. 291 is a correct copy of a letter from President Taylor of Sibley to Dr. Burns of Worcester Hospital. Gov. Ex. 292 is Dr. Burns' reply to Gov. Ex. 291. Gov. Ex. 298 is a copy of Dr. Taylor's letter to Dr. Brown. Gov. Ex. 299 is Dr. Brown's reply to Gov. Ex. 298. Gov. Ex. 295 is a correct copy of a letter from Dr. Taylor to Dr. Walter E. Lee of the University of Pennsylvania, which I took and sent to Dr. Lee. Gov. Ex. 296 purports to be a reply to Gov. Ex. 295. Gov. Ex. 672 is the application blank of Dr. Raymond E. Selders and lists the names thereon as references: Dr. Lee, Dr. Burns, Dr. Brown.

Cross-examination.

By Mr. Leahy:

I do not know Dr. Brown of the Temple University. I never saw him write.

I do not know Dr. C. J. Burns. I never saw him write. And all I know is that I received a subpoena to produce certain papers and documents, and pursuant to that subpoena I produce those documents from my files.

RAYMOND R. ZIMMERMAN, a witness for the Government (recalled).

Direct examination.

By Mr. Lewin:

I recall a dinner on the evening of June 24, before going to the Medical Society, attended by Mr. Penniman, Dr. Brown, and myself. I didn't tell Dr. Brown in connection with the anticipated meeting at the Medical Society to tell the Society doctors as little as possible, and that was not

the spirit of the meeting. I didn't say to Mr. Penniman to say as little as possible. There were no such instructions given at all. After the dinner we went to the Medical Society building, and in the lobby I didn't say to Dr. Brown or Mr. Penniman, "Don't forget, we'll give them just as little as possible." In the meeting we gave the Society a full statement of the purposes of Group Health.

I never gave instructions to Dr. Brown that he was not to deal with the hospitals and I never heard any such instructions given. I never heard any instructions to Dr. Brown that he should send me or the president of Group Health mail received addressed to him, unopened. So far as I know Dr. Brown was never restricted, and I never did anything to restrict him and I do not know of anything being done to restrict him.

WILLIAM F. PENNIMAN, a witness for the Government (recalled).

Direct examination.

By Mr. Lewin:

I was the first president of Group Health. I recall a meeting on June 24, 1937, between Mr. Zimmerman, Dr. Brown, and myself. At that meeting I didn't make any remark to Dr. Brown that he should tell the District Medical Society as little as possible about the plans of Group Health. I didn't hear Mr. Zimmerman make any such remark. I didn't make any remark in the lobby of the Medical Society building to Dr. Brown or Mr. Zimmerman that, "Now, don't forget, we will give them as little as possible." I didn't hear Mr. Zimmerman make any such statement. At the meeting we did not follow the course of telling the doctors as little as possible. I received a report from Dr. Brown on Dr. Selders, Gov. Ex. 671. As president of Group Health I at no time limited Dr. Brown's medical activities and didn't exclude him from approaching the hospitals on behalf of the staff of Group Health. I didn't give Dr. Brown any instructions that he should send to me unopened mail he received from the hospitals, and nothing to that effect was done. I kept Dr. Brown informed about my correspondence with the hospitals.

The third page of Gov. Ex. 671 was received in evidence and read to the jury as follows:

Gov. Ex. 671 is a letter from Henry Rolfe Brown, Medical Director, to Mr. Penniman, President, Group Health Association, dated October 1, 1937, to which is attached information regarding the staff of Group Health which had been obtained up to that time.

I am permitted to read to you the third page of the report which relates to Dr. Raymond E. Selders. It gives his name, Raymond E. Selders: age, 44: nativity, born in Illinois: position, surgeon: salary, \$4,800.

"Religion, Protestant.

"Marital Status. Married (No children).

"Licensed: Oklahoma, Texas; licensed in New York and Massachusetts by endorsement of Nation Board Credentials. Licensed District of Columbia.

Degrees: BA University of Oklahoma, 1918; BS ChE University of Oklahoma, 1919; BS in Medicine, University of Oklahoma, 1925; MD University of Oklahoma, 1927; MSC University of Pennsylvania, 1937.

Experience:

July 1927 to July 1928: Interned, St. Joseph's Infirmary (209 beds) Houston, Texas.

July 1928 to October 1935: General Practice including surgery, Houston, Texas.

October 1934 to June 14, 1936: Post Graduate work at Graduate School of Medicine, University of Pennsylvania, Philadelphia, Pa.

1936-1937: Resident Surgeon, Worcester City Hospital (600 beds) Worcester, Massachusetts. Has performed about 338 operations which was a part of the clinical and post graduate work taken by Dr. Selders for the purpose of securing the diploma and degree of Master in Surgery.

Dr. Selders is an experienced surgeon and has been in practice for about seven years and is splendidly qualified by his experience as a general surgeon.

Address: Home 2445 15th Street, N. W.

Telephone: Adams 5302."

The Government concluded its case.

SURREBUTTAL EVIDENCE ON BEHALF OF THE DEFENDANTS

DR. HENRY ROLFE BROWN, a witness recalled by the defendants.

Direct examination.

By Mr. Leahy:

I identify the third page of Gov. Ex. 671 as a letter of recommendation for Dr. Selders and the others for a position on the staff of the clinic of GHA. When I said in that letter: "Dr. Selders is an experienced surgeon and has been in practice for about seven years and is splendidly qualified by his experience as a general surgeon," I referred to his work in the clinic, as we had no general outside work, of course, in the hospitals and Dr. Selders was to take care of the clinic and the minor surgery in the clinic.

DR. EDWIN A. MERRITT, a witness recalled for the defendants.

Direct examination.

By Mr. Leahy:

I am a practicing physician in the District. I have specialized in radiology, which is the use of radium energy in the diagnosis and treatment of diseases, both X ray and radium. I graduated from the University of Nebraska in 1904; after seven years of country practice I went to the Rush Medical School in Chicago and specialized in internal medicine; following that course I took a further course and studied X ray in Council Bluffs, Iowa, in 1912; since that time I have confined my practice exclusively to radiology.

There are two different procedures for X raying and diagnosing conditions of the chest; one consists of taking X ray films or plates of the chest, and the subsequent reading of them. That involves one period of time. There is another medical examination which is used sometimes, a fluoroscopic survey of the chest is made, and then a plate is made. The first procedure takes a period of time and this takes another period of time. From the start it would take 30 minutes to make a fluoroscopic examination of one person's chest. In taking an X ray of the chest the matter of getting a person undressed takes the larger part of the

time; the taking of the film is a matter of a few seconds; developing is ten minutes, drying 30 minutes, and reading five minutes. A fluoroscopic examination is an examination of the patient before a fluorescent screen, and it penetrates the patient's body and is reflected on a screen. It must be done in an absolutely dark room and the eyes must be perfectly accommodated to it. It takes as a minimum 25 to 30 minutes to make such an examination because you have to allow 25 minutes for adjustment of the eyes in the dark room. That is an invariable rule. The actual examination consumes perhaps five minutes. It takes longer to interpret an X ray of the gastro-intestinal tract than of the chest, as a complete gastro-intestinal involves a study of an individual over three successive days, and the reading of the film requires 10 to 15 minutes, reviewing the fluoroscopic evidence; the evidence secured in the three previous examinations, reviewing that evidence plus the films that are taken, consumes perhaps 10 minutes, maybe 15 minutes. That process could not be done in four or five minutes. An X ray of the chest cannot be taken and interpreted in a minute. Where pathology is indicated—that is the presence of abnormality—it leads to additional study and takes longer, because if the conditions are obscure we might spend hours on an X-ray examination.

Cross-examination.

By Mr. Kelleher:

The interpretation of an X-ray plate is the study of the plate after the picture has been taken, and in an X ray of the chest that interpretation takes five minutes; one of the Gastro-intestinal tract would require, on the average, fifteen minutes for interpretation.

DR. JOSEPH S. WALL, a witness recalled by the defendants.

Direct examination.

By Mr. Kelleher:

I am a practicing physician in Washington, where I have been in practice 45 years; I graduated from Georgetown University Medical School in 1897; I did postgraduate work in the New York Postgraduate School and at Oxford, Eng-

land; I specialize exclusively in pediatrics and have done so for 30 years.

I have known Dr. Scandiffio eight or ten years; he was associated with me at Children's Hospital for a number of years and associated with me in teaching of pediatrics at Georgetown Medical School. I recall in the early fall of 1938 a conversation between Dr. Selders, Dr. Price, Dr. Scandiffio, Dr. Macatee and myself. The substance of the conference was that the doctors from Group Health were so dissatisfied with the work which they had to do down at the clinic that they wanted to resign in a body. The Group Health doctors asked me if I would try to do something for them so that they could have a living, or words to that effect, if they resigned, and asked if we thought if they did resign would they be taken back into membership in the Society and, secondly, Dr. Selders asked if he could be accorded hospital privileges if he resigned from Group Health. The Group Health doctors said that the other members of the staff of Group Health would probably resign in a body if they resigned, and that would probably result in breaking up Group Health.

Cross-examination.

By Mr. Lewin:

I have been a member of the Medical Society for 40 years. Two years ago I was put on a life membership. I have been on its Executive Committee the three years following 1926. I made a statement to Dr. Woodward that I regretted that Dr. Scandiffio had "gone into the camp of the enemy," meaning Group Health, and stated my belief the Group Health doctors "will have visited upon them the displeasure of the medical profession in Washington and will probably become medical outcasts so far as we are locally concerned," and further stated, "We should certainly be grateful for the help which may be accorded us by the AMA."

DR. HENRY C. MACATEE, a witness recalled for the defendants.

Direct examination.

By Mr. Leahy:

I recall a conversation held in the fall of 1938 at the office of Dr. Wall, at which Drs. Scandiffio, Price, Selders,

Wall, and myself were present; the conversation was had between us; Dr. Scandiffio, Dr. Price, and Dr. Selders said they were dissatisfied with the work which they were called on to do at Group Health clinic and were prepared to resign in a body, and they stated, in effect, if they resigned probably the other members of the staff would resign likewise, and that would probably break up Group Health, if they all resigned in that fashion; then Drs. Scandiffio, Price, and Selders asked us to try to do something for them in the shape of helping them out if they did resign and if the remaining members of the staff of Group Health resigned.

The defendants rested.

Thereupon the defendants jointly and severally moved the Court as follows:

To strike from the record and advise the jury not to consider any and all evidence submitted in the record relating or having reference to the so-called background of the conspiracy and consisting of evidence with respect to acts and deeds of the defendant American Medical Association, its officers and agents, occurring and transpiring outside of the District of Columbia and prior to January 1, 1937, upon the ground that such evidence and the whole thereof is incompetent, irrelevant, and immaterial to any of the issues in the above-entitled action.

To strike from the record and advise the jury not to consider any and all evidence submitted in the record relating or having reference to the so-called Washington hospitals for the purpose of proving that said hospitals were co-conspirators with the defendants herein upon the ground and for the reason that said evidence and the whole thereof is insufficient, as a matter of law, to make or constitute the said hospitals or any of them co-conspirators as charged by the Government and alleged in the indictment.

To direct and advise the jury to return a verdict of not guilty in the above-entitled proceeding upon the ground and for the reason that the record in said case, and the whole thereof, shows as a matter of law that Group Health Association, its officers, members and operations were, with reference to all matters shown in the record, unlawfully engaged in the practice of medicine in the District of Columbia in violation of the laws applicable thereto, and were

not, and none of the... unlawfully subject to or affected by any alleged restraints as charged and identified in the indictment.

To direct and advise the jury to return a verdict of not guilty in the above-entitled proceeding as to all defendants, upon the ground and for the reason that the facts, acts, and circumstances, as shown by the evidence, and the entire record herein submitted does not establish or tend to establish any conspiracy to violate Section 3 of the Sherman Act relating to trade or commerce, as set forth or defined in said Act.

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the Washington hospitals in the business of operating such hospitals."

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining doctors (not on the medical staff of Group Health Association, Inc.) practicing in the District of Columbia, including the doctors so practicing who are made defendants herein, in the pursuit of their callings."

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the doctors serving on the medical staff of said Group Health Association, Inc. in the pursuit of their callings."

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining the members of Group Health Association, Inc. in obtaining, by cooperative effort, adequate medical care for themselves and their dependents from doctors engaged in group medical practice on a risk sharing prepayment basis."

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid

defendants under that charge of said indictment that the said defendants and others conspired together "for the purpose of restraining Group Health Association, Inc. in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk sharing prepayment basis."

To direct the jury in the above-entitled cause to return a verdict of not guilty as to each and all of the aforesaid defendants.

And for cause therefor defendants state that no sufficient case has been made out against them and each of them under the indictment herein returned, to warrant and support a verdict on all or any of the charges alleged in said indictment.

Mr. Magee: The defendants at this time desire to summarize very briefly the grounds of the motions filed in the case for a directed verdict of "not guilty."

First, all of the grounds urged upon the Court in support of the motions of the defendants for a directed verdict, presented at the close of the Government's case, are reasserted in support of the pending motions.

Second, it is contended that the evidence has failed to establish any violation of Section 3 of the Sherman Act by all or any of the defendants.

In addition none of the activities charged to the defendants or proven in the evidence concern trade or commerce in the District of Columbia.

The activities particularly of Group Health Association, Inc., its members and doctors are part and parcel of the illegal practice of medicine and the illegal operation of an insurance business, and any restraints thereon are not in violation of the Sherman Act.

All of the activities charged to defendants are within their lawful rights and do not violate Section 3 of the Sherman Act.

The defendants, the members of defendants, American Medical Association and the Medical Society of the District of Columbia, Group Health Association, Inc., its doctors and members are all shown by the evidence to be engaged in the same trade or occupation, or have direct or indirect

interests therein. The evidence further discloses that these parties are in a controversy concerning, involving or growing out of a dispute concerning terms or conditions of employment pertaining to the care and treatment of patients and their hospitalization, or concerning the association or representation of persons, in negotiating, fixing, maintaining, changing, or seeking to arrange terms and conditions of employment of physicians in the care, treatment, and hospitalization of patients. This establishes the existence of a "labor dispute" and renders the activities charged or proven against the defendants legal under the terms of the Norris-La Guardia Act (Act of March 23, 1932, 29 U. S. C. A. 101-115) and of the Clayton Act (38 Stat. 738, 29 U. S. C. A. 52).

"United States v. Hutcheson (No. 43, October Term, 1940, decided February 3, 1940) — U. S. —"

Milk Wagon D. Union v. Lake Valley F. Products, 85 L. Ed. 91.

New Negro Alliance v. Grocery Company, 303 U. S. 469.

Apex Hosiery Co. v. Leader, 310 U. S. 469, 507, m. 26.

Senn v. Tile Layers Protective Union, 301 U. S. 468.

For the foregoing and other reasons apparent on the face of the record and in the evidence it is submitted a verdict of "Not Guilty" should be directed as to each and all of the defendants.

The Court overruled all of the defendants' motions and allowed an exception.

The Requests or Prayers for Instructions of the United States

The United States, at the close of the evidence, requested that the following instructions or prayers on the law be given the jury:

1

All of the defendants have entered pleas of not guilty to the indictment. The defendants, therefore, have entered upon this trial presumed by the law to be innocent of any crime until proven guilty and that presumption continues with the defendants until you reach your verdict. Granted.
J. M. P.

2

The burden of proving the defendants guilty is upon the Government. This does not mean, however, that the Government's proof must establish the defendants' guilt to an absolute certainty. You may find the defendants guilty, if you are convinced beyond a reasonable doubt of all the essential facts necessary to establish the guilt of the defendants. Granted. J. M. P.

3

A reasonable doubt must be real and not imaginary. It must be an honest and substantial misgiving for which a good reason may be given, based upon the nature of the evidence or lack of evidence in the case. If all the evidence in the case, impartially and reasonably considered, produces in your minds a settled conviction or belief of the defendants' guilt—such an abiding conviction as you would be willing to act upon in the most important affairs of your own life—you may be said to be free from any reasonable doubt, and should find a verdict in accordance with that conviction or belief. Granted. J. M. P.

The Court: No. 3 sounds correct. It is not exactly the way I give it, but it is on the same lines. It is on reasonable doubt.

Mr. Burke: I think, your Honor, between the dashes it is not just right—

“such an abiding conviction as you would be willing to act upon in the most important affairs of your own life.”

The Court: That is an old, approved instruction. Objection overruled and exception noted.

4

In considering the testimony, you should, as to each witness, consider his demeanor and manner of testifying, his interest, if any, in the result of the trial, any temptation to testify falsely, his opportunity to know the facts, the probability or improbability of the testimony given, and all other like circumstances appearing from the evidence; and, from all these, you should determine the weight and credit to be given to the testimony of the witness. In case you become satisfied from the evidence that any witness has wil-

fully testified falsely as to a material fact, you are at liberty in your discretion to disregard all the testimony of the witness. You may, however, in your discretion, elect to give credit to a part of his testimony and to give no weight to the rest. Granted. J. M. P.

7

While all of the defendants in this case have been jointly indicted and tried, each defendant is entitled to an independent consideration by you of the evidence as it relates to his conscious participation in the unlawful acts charged by the indictment. It is your duty to determine separately the guilt or innocence of each individual defendant and of each defendant society. Granted. J. M. P.

10

The indictment in this case charges the defendants with engaging in a combination and conspiracy in violation of Section 3 of the Sherman Antitrust Act. Where two or more persons are united together to accomplish an illegal object, they are engaged in a conspiracy. In determining whether a conspiracy exists, it is not necessary for you to find that there was a written or formal agreement among the defendants, or that any participant in the conspiracy was bound to another to perform any portion thereof. It is sufficient to establish a conspiracy if, from all of the evidence, it appears that the defendants were voluntarily acting together—however informally—in order to carry out their common objectives. Granted J. M. P.

Defendants objected on the ground that it is confusing; that there must be found an agreement and that this prayer doesn't leave that impression. Objections overruled and exception noted.

11

It is not necessary that all of the parties to a conspiracy shall actually meet together at one and the same time and place, or that all discuss its purposes or the means of carrying its objectives into effect, or that each party know all of the other parties. Nor do you need to find that all of the participants combined together at the start of the conspiracy. If it is shown that the conspiracy was entered into between two or more of the defendants and that at any later time during its existence new or additional parties,

while aware of its existence, united with them for the purpose of aiding in the accomplishment of the scheme, they are from that moment fellow conspirators and equally responsible for all of the consequences which flow from the conspiracy. Granted J. M. P.

12

You will understand that mere passive knowledge of the existence of a conspiracy or mere passive knowledge of the acts of others in connection therewith is not sufficient to make the one having such knowledge a member of the conspiracy. Granted as amended. J. M. P.

13

Once you find a conspiracy to exist, the acts and declarations, both oral and written, of each party to the conspiracy in furtherance of the objects thereof may be considered as evidence against all of the parties to the conspiracy. This is true even though the party doing such act or making such declaration is not on trial or is not named in the indictment as a defendant. That is, every person who, knowing of the conspiracy, does any act or makes any statement intended to further the objects thereof, does thereby become party to the conspiracy. Granted as amended. J. M. P. Exc.

Defendants objected on the ground that it is too broad; assumes a conspiracy; incorrectly states the law applicable to the facts involved; incorrectly states the law as to how a person becomes a party to an unlawful conspiracy and incorrectly states what evidence is necessary to make a party a co-conspirator. Objections overruled and exceptions noted.

14

The indictment in this case charges, in substance, that the defendants combined and conspired together (1) for the purpose of restraining Group Health Association, Inc., in its business of arranging for the provision of medical care and hospitalization to its members and their dependents on a risk-sharing prepayment basis; (2) for the purpose of restraining the doctors serving on the medical staff of Group Health Association, Inc., in the pursuit of their calling; (3) for the purpose of restraining doctors not on the medical staff of Group Health Association, Inc., practicing in the

District of Columbia, in the pursuit of their calling; and (4) for the purpose of restraining the Washington hospitals in the business of operating the hospitals. Granted. J. M. P.

"Mr. Richardson: Does fourteen do any more than bring in the indictment?"

"The Court: I thought not. I notice you folks leave out two; it charges only part of one. You see, you first charged Group Health.

"Mr. Burke: I think it is an important part of our case because G. H. A. and its local members are two entities, are different. I think if that is so, your Honor should sustain the motion as to the second point.

"Mr. Magee: The Court of Appeals didn't approve that member charge.

"The Court: They approved the whole thing. They gave it a badge of honor.

"Mr. Kelleher: In any event, we are doing what the defendants want us to do.

"Mr. Burke: We are moving that it be stricken.

"The Court: The way it can be handled, as to the second paragraph, you can simply disregard that. It simplifies it.

"Mr. Kelleher: I think you have that affirmatively.

"The Court: We are talking about a lot of things that the jury never pay any attention to. I am going to state this indictment in my own way. I will grant this."

Objections overruled and exception noted.

22

If you find that the defendants were engaged in a combination such as I have explained, it is unnecessary for you to decide whether Group Health Association or its staff may have violated the Principles of Medical Ethics of the American Medical Association. Thus, even if such were the facts, it is immaterial that Group Health Association may have employed doctors on a contract basis, or that the members of Group Health Association may not have had complete freedom of choice of physician from the entire body of doctors practicing in the District of Columbia, or that Group Health Association or its organizers may have solicited Government employees to join Group Health Association. It is likewise immaterial to the issues which you must decide that the defendants may have believed that Group Health Association or the mem-

bers of its medical staff violated the Principles of Medical Ethics of the American Medical Association. None of these matters should be considered by you in reaching your verdict. Granted. J. M. P.

"Mr. Richardson: Of course, twenty-two cannot be so. That is, it cannot be so and keep the society in existence.

"Mr. Leahy: The trouble is that you are argumentative in your instructions. You cannot assemble points of evidence and throw them to the Court and ask the Court to argue it for you.

"The Court: Well, I think you are entitled in a colorless way to have the rule stated, without argument, that if they did in fact conspire to restrain, and they find that beyond a reasonable doubt, then the use of ethics and these other things as justification for it would afford no justification. That is very roughly stated, but that is what you mean:

"Mr. Lewin: That is it.

"The Court: I will revise it.

"Mr. Kelleher: I think it is a very fair statement there. It is an uncolored unargumentative statement. I think in view of the stress laid upon these immaterial issues by both sides it ought to be given.

"Mr. Lewin: If a conspiracy did exist then the employment of ethics to restrain it would not justify it. The plea of the defendants that the object was unethical cannot justify their conduct.

"Mr. Leahy: No, you cannot say that. We have the right to use that in persuasion.

"The Court: You have the right to this: I don't think the matter of belief is material for this reason: that you have the right to argue and it doesn't matter whether your argument is right or wrong, whether you believe it or not. I have a right to argue as demagogues do every day on the street, or some fakers on the avenue, if I do not transcend the law by obtaining money under false pretenses. The fact that I may not be sincere in what I say makes no difference.

"Mr. Richardson: That is all right if you follow it up, but here we are charged with being actuated by an improper motive.

"Mr. Lewin: Your motive isn't material. The purposes with which you did what was done as charged in the indictment. If the jury finds you did those things purposely, then you have restrained G. H. A.

"Mr. Richardson: We don't care anything about the indictment.

"Mr. Laskey: They cannot consider it as evidence.

"The Court: I instruct them very carefully that the indictment is no evidence and raises no presumption of guilt, but on the contrary there is a presumption of innocence.

"Mr. Lewin: We would like to get away from these good motives.

"Mr. Richardson: I don't blame you.

"The Court: You said this was not sufficient?

"Mr. Kelleher: Here is what we were after in this charge: that it makes no difference if they find that Group Health did in fact violate the principles of ethics or that the defendant believes that they did.

"The Court: Yes, I understand. Of course, I shall tell them that it is unquestionably the law they are not required to live up to the ethics of the Medical Association. They are not required to have the ethics and standards of the Association. If they didn't have it, it would make no difference.

"Mr. Richardson: And if as a result of their not living up to the principles of ethics and they desired to associate with those who do, and are not accepted, they get what they deserved.

"Mr. Leahy: You can't make anybody consult with somebody else.

"Mr. Kelleher: If they refused to consult in order to drive G. H. A. out, it is illegal regardless of the reason. Even if they thought it was unethical.

"The Court: If they thought it was agreed that 'we are going to rush G. H. A., put it out of business; and we are going to do it by enforcing our rules of ethics' against them, then, of course, you have a conspiracy.

"Mr. Richardson: But you cannot take the action that was directed against G. H. A. and prove backwards by inference how the thing started.

"The Court: No, I can't say to the jury you have to assume that they did these things. The first thing is to find out whether they had a conspiracy.

"Mr. Leahy: What you want the Court to say is the refusal to consult amounts to conspiracy.

"Mr. Lewin: Well, here is a concerted refusal.

"Mr. Kelleher: If it is a refusal to consult for the purposes charged in the indictment, it is illegal.

"The Court: I am underscoring here 'if a conspiracy'; then 'employment of ethics, et cetera, to restrain would not be a defense'; the violation of ethics by G. H. A.

"Mr. Lewin: Or the belief on the part of the defendants that G. H. A. had violated these ethics.

"Mr. Leahy: I would like your Honor also to state that these various pieces of evidence are not proof per se of conspiracy.

"The Court: I shall tell them that there was no legal obligation, legal ethical obligation on the part of any physician to consult with any other physician.

"Mr. Leahy: Therefore even though they find that the members of the society refused to consult with G. H. A., they must further find that that was done with intent to destroy it.

"The Court: You see, let us assume that these regulations against consulting, et cetera, is an unlawful agreement to restrain physicians in medical practice. That is not what you are charged with. We don't have to deal with that.

"Mr. Richardson: No, but you have this situation: Here is a group of people in a meeting. Oh, they are confederating; one says something; they are all conspirators because of the very fact they were in a meeting. You are dealing with a society.

"The Court: I know you are arguing the matter now, but as a matter of fact anything that brings alleged conspirators together is a thing that may be considered by the jury whether it is reasonable or not, and the thing, in view of the fact that they are members of the society, will be argued on the one side; and whether it is unreasonable and may be treated as the act of a conspirator, may be argued on the other. That is a matter for argument. I cannot say the fact that men got together, this is some evidence. I can't consider it one way or the other, and I don't want to."

"Mr. Magee: So you make that clear, that reasonable belief."

Objections overruled and exception noted.

23

If you find that the defendants were engaged in a combination such as I have explained, it is unnecessary for you to decide whether the medical care given by the medical staff of Group Health Association was equal to, superior to, or inferior to, the quality of medical care rendered by doctors engaged in private practice. The quality of medical care rendered through Group Health Association is immaterial to the issues in this case and you are not to consider it in reaching your verdict. Granted. J. M. P.

"Mr. Richardson: Twenty-three.

"Mr. Magee: It is exactly the same.

.

"Mr. Leahy: That falls in the same category as the other.

"The Court: I have it marked with a question.

"Mr. Kelleher: I think in view of the stress laid upon it it is certainly a relevant issue in your Honor's mind; certainly should be clarified.

"The Court: But you all stepped into it.

"Mr. Richardson: I don't think it is a false issue. The last sentence here is dead wrong.

"Mr. Leahy: The whole thing is dead wrong.

"The Court: I think this can be treated in this way: that there has been evidence pro and con in this case as to the ability of Group Health to render good medical care. That question has been injected into the case by reason of contradictory statements of the parties which evolved around it. It goes to the question of credibility of witnesses rather than to make this a relevant, material issue in the case, and you may consider it in that way.

"Mr. Leahy: I think that is a little confusing.

"The Court: Even if the general opinion of people was that Group Health was rendering good medical care, you have a perfect right to argue it, unless you should go to the point of libel.

"Mr. Richardson: One of the theories of the entire build-up of the prosecution is that that is the way to give good medical service.

"Mr. Lewin: No; we were very careful to refer to it as a reasonable experiment.

"The Court: I do not know just how it should be treated, to be frank with you. It has been a problem with me.

"Mr. Kelleher: If there has been a conspiracy to drive this organization out, they cannot justify it by saying that they thought it was not giving adequate medical care.

"Mr. Lewin: It is the same thing as the \$40,000 grant. It is the same thing as the principles of ethics.

"Mr. Richardson: We want to offer the proposition that one of the reasons why we did not want our members to have anything to do with this organization was because it was a fraud medically.

"Mr. Lewin: But you cannot make that argument, because you would run right into the teeth of the law.

"Mr. Richardson: We have a right to use persuasion on our members.

"Mr. Kelleher: That is a boycott, and you cannot justify a boycott.

"Mr. Lewin: Not on any such grounds.

"Mr. Richardson: We are justified in trying to control our own members for our own good.

"Mr. Lewin: That is a boycott.

"Mr. Richardson: No, it is not.

"The Court: A question that has been in my mind—and I have not resolved it one way or the other—is whether or not these things may not give a background in behalf of the defendants to reflect upon the reasonableness of the things they did.

"Mr. Kelleher: The reasonableness is not in issue if the facts of the indictment are found by the jury.

"Mr. Lewin: It is unreasonable per se if they find the facts stated in the indictment.

"The Court: If they find that a conspiracy was entered into which involved boycotting and coercion and that sort of thing, why, of course, then you could not justify it by the fact that G. H. A. may have been running a poor business. No matter what your beliefs were, you cannot hop over all those hurdles. But why should I not also say to the jury, 'However, as bearing upon the question of the intention or the intended effect of the acts of the defendants, you may

note the circumstances under which they did act as reflecting upon that intent and purpose.'

"Mr. Lewin: I do not see how they could. They either intended to destroy Group Health or they did not. That is the issue. That is the issue you are leaving to the jury.

"The Court: Suppose they were not attempting to destroy it, but merely attempting to protect themselves?

"Mr. Lewin: If it were a bad organization that would be one of the reasons for them to attempt—

"Mr. Leahy: It would be one of the reasons to protect themselves against it.

"Mr. Lewin: You have no right to protect yourselves by this kind of a conspiracy.

"Mr. Leahy: If you hit me, I have a right to hit you.

"The Court: I do not know whether it was in the Appalachian Coal case or in some other case, but it has been held that persons have a right to protect themselves in their business against—

"Mr. Magee: Against unfair practice in the industry. That is the language.

"The Court: Against their competitors. If that is all they have done it does not amount to a violation of the statute.

"Mr. Kelleher: They cannot refuse to deal for that reason. That is what is charged here. So they could not possibly justify it.

"The Court: I think we all agree on this, but it is just a question of how we are going to state it. You want me to state one part of it; they want me to state another part of it. If I state both parts of it, I suppose that will be all right. There is an element of intent.

"Mr. Lewin: You ought not to bear on that. These are reasons and beliefs. That is what these things are.

"The Court: The question is this: Did they intentionally do acts the natural and probable effect of which would be to restrain G. H. A.? If they did, then they are guilty.

"Mr. Lewin: Whatever their reasons.

"The Court: Whatever their ultimate motive may have been is unimportant. But as bearing upon the question of intent, as reflecting upon the question of intent, in order that you may determine what the intent and purpose were or what the natural and probable effects of their acts were intended to be, you may look into these things and see what they were dealing with, to determine whether or not their

purpose was to restrain them merely by argument and persuasion to protect themselves.

"Mr. Laskey: To protect themselves and the public.

"The Court: They were not so much interested in the public.

"Mr. Laskey: Would not that be a good reason, however?

"The Court: That is a thing that might be considered, of course.

"Mr. Kelleher: Then it means that this jury is required to find specific intent to restrain.

"The Court: They have either got to find intent to restrain or they have got to find that the things which were intended would have the natural and probable effect of restraining them.

"Mr. Kelleher: The mere fact that they agreed among themselves to refrain from dealing with the organization because they believed that the organization was offering bad medical care would not tend to show that they did not intend to agree together for that purpose. The effect of it was to prevent them from obtaining a status irrespective of whether the medical care was good or not.

"Mr. Richardson: So that if G. H. A. was a band of bank robbers, you could not mention it?

"Mr. Lewin: That is right.

"Mr. Leahy: If I go out and buy a gun, and you say, 'Do you want it to shoot a bank robber?' And I say, 'No; I intend to use it to protect myself'—

"The Court: I have got this marked in the same category as the others.

"Mr. Lewin: If it is covered in the same way we are agreeable to it.

"The Court: I will pass it as it is. My inclination is to refuse it and treat it along the lines of these others.

"Mr. Kelleher: That is perfectly agreeable, your Honor."

Objections overruled and exception noted.

If you find that the defendants were engaged in a combination such as I have explained, it is unnecessary for you to decide whether Group Health Association was financially sound. The financial condition of Group Health Association and the sources of its financial support during the period

of the conspiracy are immaterial to the issues in this case. It is also immaterial that the defendants may have believed that Group Health Association was financially unsound or that it was subsidized by other organizations. Such matters are not to be considered by you in reaching your verdict. Granted. J. M. P.

"Mr. Richardson: No. 24 is the same thing.

"The Court: I have them marked the same way. I am going to bulk these things a little more than you have got them here. I can shorten them."

Objections overruled and exception noted.

Defendants' objections as stated hereinbefore were overruled and the requests or prayers for instructions of the United States numbered 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, 22, 23 and 24 were granted by the Court, with an exception to the defendants.

The Requests or Prayers for Instructions of the Defendants

The defendants, at the close of the evidence, requested that the following instructions or prayers on the law be given the jury:

1.

I charge the jury to return a verdict of "Not Guilty" as to each and every defendant, as to each and every restraint charged in the indictment. Refused. J. M. P.

2.

The jury is instructed as a matter of law that this case is a criminal prosecution, under an indictment returned by a special grand jury in and for the District of Columbia, for an alleged violation of Section 3 of the Sherman Anti-Trust Act, a Federal statute, which provides as follows:

"Sec. 3. Every contract combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, is hereby declared illegal. Every person who shall make any such contract or

engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the Court."

The burden of proof in a criminal case is on the plaintiff and in carrying this burden of proof the plaintiff must prove beyond a reasonable doubt that the defendants and each of them are guilty of the offense charged in the indictment. If, after hearing all the evidence in the case, the jury finds that the evidence concerning the guilt of the defendants is preponderated by the evidence of the defendants or if the evidence of the plaintiff and the defendants is evenly balanced or if there remains in the minds of the jury a doubt based on reason, so that the jury is not satisfied beyond a reasonable doubt that the defendants are guilty of the offense charged, then the verdict of the jury should be "Not Guilty" as to all defendants. Refused. J. M. P.

3.

The jury is instructed as a matter of law that the Government must maintain its burden of proof and must prove each defendant guilty of the offense charged beyond a reasonable doubt, and if the jury finds from all the evidence in the case that there is a doubt as to the guilt or innocence of some of the defendants, then the verdict of the jury should be "Not Guilty" as to all such defendants. Refused. J. M. P.

"Mr. Lewin: Prayer No. 3 omits the word 'reasonable'.

"Mr. Laskey: Your Honor mentioned the fact that it is not necessary to find all defendants guilty. Put in that way it might leave the inference that it is necessary to find one of them guilty.

"The Court: I did not mean to say that I would state it in that way. I merely made a note on here. The note is rather misleading in suggesting that it would not be necessary to find them all guilty. I will treat that a little differently so there will be no question about it. I am going to refuse that prayer just as it is, and you can check up on me when I am charging the jury and see that I do it correctly. I will cover it."

5.

The jury is instructed as a matter of law that before any verdict of guilty can be returned against any of the defendants that the jury must find from the evidence that trade in the District of Columbia is involved in the offense charged in the indictment. Section 3 of the Sherman Anti-Trust Act, which the indictment charges the defendants have violated, concerns only trade and commerce. In this particular case the indictment concerns only trade in the District of Columbia. Trade as involved in Section 3 of the Sherman Act has a definite and fixed meaning in law. Whenever any occupation, employment or business, is carried on for the purpose of profit, or gain or livelihood, not in the liberal arts, or in the learned professions, it is constantly called a trade.

If the jury finds from all the evidence in the case that the activities charged to the defendants do not concern trade of the District of Columbia within the meaning of the foregoing definition, then the verdict of the jury should be "Not Guilty" as to all defendants. Refused. J. M. P.

"The Court: The fifth prayer I am going to refuse. I will mark it Refused, with exception. You can have an exception to all of them that I refuse, so that if I do not cover them properly in my charge you have got your exception. That may be understood."

6.

The jury is instructed as a matter of law, if they find from the evidence, first that the activities charged to the defendants concern trade in the District of Columbia, then they must find from the evidence that the objects of the activities charged to the defendants or the activities of the defendants, directly, materially and unreasonably restrained trade in the District of Columbia before a verdict of guilty can be returned against all or any of the defendants. Refused. J. M. P.

"Mr. Kelleher: We object to Prayer No. 6 on the ground that it is confusing.

"The Court: I have it marked Refused.

"Mr. Leahy: Your Honor will cover it in the charge, will you?"

"The Court: Yes. I have got to cover it. I am bound to."

8.

The jury is instructed as a matter of law that only such combinations and conspiracies are within the provisions of Section 3 of the Sherman Anti-Trust Act as by reason of intent or the inherent nature of contemplated acts; prejudices the public interests by unduly restricting competition or unduly obstructing trade. In applying this test, the jury is instructed that the probable fact that the defendants have combined is not enough to render their actions illegal. The legality of the acts charged to the defendants cannot be determined by the simple test of whether or not those acts restrained trade. Every combination or agreement concerning trade, every regulation of trade restrains. The application of the statute in each case is a question of intent and effect. In determining whether or not the actions, charged to the defendants directly, materially and unreasonably restrained trade, the jury should consider the economic conditions peculiar to the practice of medicine, the practice and rules of ethics which have obtained, the nature of the acts of the defendants, the nature of the defendants' alleged plan, the reasons which led the defendants to act as they did and the probable consequences of the carrying out by the defendants of the acts charged in relation to matters affecting the public interest in the practice of medicine.

If from all the evidence in the case the jury finds that the actions charged to the defendants did not adversely affect the public interest, then a verdict of "Not Guilty" should be returned as to all defendants. Refused. J. M. P.

"Mr. Kelleher: No. No. 8 we object to.

"Mr. Richardson. Is No. 7 allowed, Mr. Justice?

"The Court. Yes. I have marked No. 8 refused. One ground is that it is argumentative; the other is that it is an overstatement, if you know what that means.

"Mr. Magee. I followed the language of the court in that case.

"The Court. I have here, 'Not for jury to determine whether public interest adversely affected.'

"Mr. Kelleher: That is exactly right.

"The Court: The jury is only to determine whether the charge is proven. The next is that the jury does not determine public policy. That is a matter for the legislature."

9.

The jury is instructed as a matter of law that a combination or conspiracy is not unlawful unless it destroys competition to an extent injurious to the public interest. If the jury finds from the evidence in this case that the alleged combination or conspiracy charged to the defendants did not destroy competition to an extent injurious to the public interests then their verdict should be "Not Guilty" as to all defendants, as the Sherman Act is founded upon conceptions of public interest enacted not preventing probable injury to individuals, but the harm to the general public. Refused. J. M. P.

"The Court: No. 9 is the same as the other one. Refused."

10.

The jury is instructed as a matter of law that not all combinations and agreements affecting trade in the District of Columbia are condemned by the Sherman Act.

Where a combination or conspiracy was entered into with the object of properly and fairly regulating the practice of medicine in which the defendants are engaged or interested, such combinations or conspiracies are not a violation of Section 3 of the Sherman Act. If the jury finds from the evidence that the alleged combination or conspiracy was a reasonable regulation of the practice of medicine and further finds that the effect of its formation and enforcement on trade in the District of Columbia is but indirect and not its purpose or object, then a verdict of "Not Guilty" must be returned as to all of the defendants. Refused. J. M. P.

"The Court: I have No. 10 marked Refused. There is a contradiction in terms. The definition of a conspiracy is that it is an agreement to do a criminal thing.

"Mr. Magee. Not under the Sherman Act.

"Mr. Richardson. Justice Holmes expressly said that it may be either lawful or unlawful.

"Mr. Kelleher: He said that a combination may be lawful, but not a conspiracy.

"Mr. Magee: It is not every unlawful conspiracy that violates the Sherman Anti-Trust Law.

"The Court: I think you will find the conventional definition of a conspiracy is that it is an agreement to do a

criminal thing or to do something lawful in a criminal way. We can change those words. If the regulations and acts were not intended to restrain but were only reasonable regulation and acts for the government of the society, then there was no crime. I think that prayer ought to be refused. That is No. 10."

14.

"The jury is instructed as a matter of law that the defendants, American Medical Association and Medical Society of the District of Columbia, have the right to adopt rules for just and fair dealing among their members and the right of enforcement of these rules and regulations by such reasonable penalties as they may provide for their violation."

(The refusal of these defendants to approve any association or corporation affording facilities for the treatment and care of patients of the physicians or employing physicians for the treatment and care of patients is not improper or illegal and if the jury finds from the evidence that the compelling of members to abide by rules and regulations of these defendants and their members, including the individual defendants, from associating with or doing business with associations, corporations, or physicians who are not members of or have been approved by the defendants, such an effect is an indirect, immaterial and reasonable restraint of trade and does not violate Section 3 of the Sherman Anti-Trust Act.)^a Granted as amended. J. M. P.

"(The Court:) I have two objections to prayer No. 14.

"Mr. Magee: It is in the ponderous and heavy language of the court in the Anderson case.

"The Court: The first sentence is all right.

"Mr. Richardson: We can find you fifty cases that approve the Anderson case.

"The Court: The first sentence is all right; there is no objection to that sentence. The next one is:

'The refusal of these defendants to approve any association or corporation affording facilities for the treatment and care of patients is not improper or illegal,' and so forth.

You have got me telling the jury it is not illegal, but I maintain that it may be illegal according to the intent or

^a The portion in the parenthesis was denied.

the necessary effect of their act. You have got me stating categorically to the jury that it would not be illegal.

"Mr. Leahy: We will strike out after the first sentence.

"The Court: The third part of it is bad, because it is the court finding the facts for the jury.

"Mr. Kelleher: Let us say 'in and of itself' again there.

"The Court: You may say it is not done for unlawful purposes. I do not understand that any of the rules and regulations were adopted after the conspiracy began. The only charge is that you used them for the purpose of carrying out a conspiracy.

"Mr. Lewin: One was adopted, as a matter of fact, afterwards.

"Mr. Kelleher: May we have 'in and of itself' there?

"Mr. Richardson: Not in the first sentence. The first sentence is absolute.

"The Court: Your prayers cover that, do they not? What I shall probably do when I get to working on this is to couple this thing with the statement, 'However, if adopted for serving a reasonable and proper purpose and were subverted to the execution of an unlawful purpose,' and so forth.

"Mr. Kelleher: That is fine.

"Mr. Lewin: That is just what we had in mind.

"The Court: Is it all right to strike this out, gentlemen?

"Mr. Richardson: Yes.

"Mr. Leahy: Yes.

"The Court: It is granted as amended. I have put down, 'Couple the Government's prayer as to lawful use.'"

The jury is instructed as a matter of law that the defendants have the right to refuse to do business with or be associated with any person or persons engaged in activities in violation of law. And if from all the evidence the jury finds that Group Health Association, Inc., during the period of the alleged conspiracy, was engaged illegally in the practice of medicine, then the jury is justified in finding that the enforcement of the defendant's rules and regulations, and principles of ethics forbidding members to associate themselves with Group Health Association, Inc., or to consult with members of its staff, were reasonable regulations of the defendants' profession, and do not spell out an un-

lawful combination or conspiracy in violation of Section 3 of the Sherman Anti-Trust Act. Refused. J. M. P.

"The Court: No. 15 is refused."

16

The jury is instructed as a matter of law, if they find from the evidence that the activities charged in the indictment to the defendants concern and relate to the profession of medicine and that all of the restraints intended concern and relate to the practice of medicine, then the jury is instructed to return a verdict of "Not Guilty" as to all of the defendants because the profession of medicine is not a trade within the meaning of Section 3 of the Sherman Act. Refused. J. M. P.

"The Court: No. 16 is refused."

17

The jury is instructed as a matter of law that if they find from the evidence that Group Health Association, Inc., is a corporation, that it operates a clinic, that it employs licensed physicians and surgeons to treat its members, that it receives from its members dues or fees for such treatments, that its method of doing business destroys the proper doctor and patient relationship and renders the doctors on its staff the hired servants of the corporation, and that it is in fact thus practicing medicine illegally because a corporation as such lacks the qualifications necessary for a license to practice medicine in the District of Columbia. Any restraints found by the jury against Group Health Association, Inc., its members, its doctors, or other doctors in rendering services to the corporation are justifiable and a verdict of "Not Guilty" should be rendered by the jury as to all defendants. Refused. J. M. P.

"The Court: No. 17 is refused."

18

The jury is instructed as a matter of law that concerted action to remove a harmful and destructive method of practicing medicine, even though such removal may affect Group Health Association, Inc., does not violate the Sherman Act if it is not intended and does not operate to unreasonably

restrain trade in the District of Columbia and leaves the defendants free to compete with each other. Refused. J. M. P.

"The Court: I think No. 18 is all right except for this—I have marked it Refused, with a question mark, on the ground that I should not say to the jury that G. H. A. is harmful and destructive.

"Mr. Magee: It does not say that.

"The Court: It carries that inference. What are you talking about when you say 'concerted action to remove a harmful and destructive method of practicing medicine'?

"Mr. Magee: It hits at G. H. A., that is the theory of group practice as a whole. It may affect any one of the groups.

"The Court: The jury may say, 'The Judge says that it is a harmful and destructive method of practicing medicine.'

"Mr. Richardson: 'What is claimed to be a harmful and destructive method;' and so forth.

"The Court: I will refuse it as it is. I will make a little note here to see if I can cover it in a proper way. I will go over this and see what I think ought to go in."

23

I charge you that the acts alleged to have been done by the defendants, do not constitute a criminal conspiracy or to impose unlawful restraints upon anyone and particularly upon Group Health Association, Inc., its doctors, members or operations, if you find that such acts done or intended by the defendants were reasonable as regulations of professional practice, and in this connection I charge you rules of conduct in medical practice are important both to the profession and to the public, and such reasonable rules can best be made by the profession itself for the purpose of eliminating evils which may exist in the field of the medical profession. Refused, J. M. P.

"Mr. Kelleher: Now, 23: I think it is all covered.

"The Court: Well, I have this: that your arrangement of your language is misleading. It seems to me that way. It is rather assertive, coming from the Court and is quite argumentative. That first part, especially; I wouldn't state it that way to the jury.

"Mr. Leahy: Could you give us the thought in there, because it is expressed by the Court of Appeals that reasonable rules may be made by the profession itself.

"The Court: I would say,—I will take care of that.

"Mr. Lewin: I believe it is purely argumentative.

"The Court: No, they have a right to consider these regulations; whether they are reasonable as applied to a lawful purpose.

"Mr. Lewin: I am not sure that it is a matter of fact they have any such right.

"The Court: I am going to refuse the prayer as it is on the ground that the present arrangement of the language seems quite misleading to me, especially as to the first clause; and that last part of it is quite assertive and argumentative; and then I will make a note here to cover it in some other way."

31

I charge you that free and fair competition is just as desirable in the medical profession as in other activities within the purview of the Sherman Act; and I charge you further that the defendants were entitled, both collectively and individually, to adopt and carry out reasonable regulations in professional practice for the purpose of maintaining free and fair competition in the District of Columbia and to use all legitimate persuasion and reasoned argument thought proper to support what the defendants believed was free and fair competition in the medical profession, and that any restraints caused thereby upon Group Health Association, Inc., its doctors, members or operations, without more, would not violate the Sherman Act. Refused. J. M. P.

"The Court: 31. Is this bad? I say this ought to be refused. It would leave the jury to determine; it would make them the judges as to whether acts were illegal or not. I think that is right, is it not? 'What the defendants believed was free and fair competition' et cetera—I will refuse that."

32

I charge you that the defendants, both collectively and individually, had a right to examine into and to approve or disapprove for themselves and all others whom they might persuade to agree with them, any and all types, kinds and methods for the securing or administering of medical

service, and that the said defendants, either individually or collectively, had a right to reach such conclusion with respect to any particular plan for the furnishing of medical service as might seem proper to them, and that the said defendants had the right, both publicly and privately, to urge, advance and support that plan of medical service which, to them, seemed best, either in the interests of the defendants themselves, the interests of their Societies, the interests of the medical profession, or in the best interests of the public. Refused. J. M. P.

"The Court: 32 has this 'approved' and 'disapproved'. I say this: they had a right to disapprove and oppose by lawful means, and a right to support it by lawful means. This language is misleading. I can remember it very well when you say 'all others', et cetera. I am going to refuse that as it is and I am going to make a note to revise that language. As far as you are concerned it will be refused."

33

I charge you that the defendant District Medical Society and the defendant members thereof had a right to retain and employ competent legal counsel to advise them in matters in connection with which such advice was desired, and particularly in reference to their rights and duties in their Medical Societies, and in rules and regulations relating thereto, and I charge you that the defendants were entitled to rely upon the legal advice so obtained, and, if you find from the evidence that the defendants did rely upon such legal advice, then you are entitled to take that fact into consideration in determining whether or not that which such defendants did in the controversy here presented, as a result of such advice was reasonable or unreasonable. Refused. J. M. P.

"The Court: 33, that is out. There is no question about it."

36

I charge you that in order to convict the defendants, or any of them, in this case, you must find that the acts, if any, committed by such defendants were committed for the direct and primary purpose of restraining Group Health Association, Inc., and were not primarily committed for the purpose of supporting and protecting either the interests

of the defendants themselves, their Societies, their profession, their code of ethics, the public interest, or their method and type of medical practice. Refused. J. M. P.

"The Court: What about 36?

"Mr. Lewin: I think it is bad.

"The Court: I have it marked 'Refused' with a question mark. The underlying thought is not objectionable but the statement is confusing and misleading, especially as to intent and motive. 'If restraint intended or effect natural it is immaterial, whether primary or secondary.'

"Mr. Lewin: That is the point. You have stated my point.

"The Court: I think I will refuse it.

"Mr. Richardson: Will you make a note to give the thought in it?

"The Court: I will."

38

I charge you that the offense of conspiracy may be established by circumstantial evidence, but circumstantial evidence to warrant a conviction in a criminal case must be of such a character as to exclude every reasonable hypothesis but that of guilt of the offense imputed to the defendants, or, in other words, the facts proved must all be consistent with and point to his guilt only, and inconsistent with his innocence. The hypothesis of guilt should flow naturally from the facts proven and be consistent with them all. If the evidence can be reconciled either with the theory of innocence or with guilt, the law requires that the defendant be given the benefit of the doubt, and that the theory of innocence be adopted. Refused. J. M. P.

"The Court: This is also circumstantial evidence. I have a question here about this part in the center beginning with 'in other words, the facts proved must all be consistent with guilt and inconsistent with innocence.' I think that is a little incorrect.

"Mr. Richardson: That is an exact quotation.

"The Court: If they are both reasonable inferences,—that is the point of it. If you have two inferences, either one of which is reasonable, then, of course, you cannot convict, because you have a reasonable hypothesis which necessarily involves a reasonable doubt, but if one is un-

reasonable and the other reasonable, you follow the line of reason. It ought to be qualified in that respect.

I will refuse it as it is but I will make a note to cover that."

40

I charge you that, if you find that it is a reasonable inference from the facts proven that the defendants in committing any acts which you may find they did commit, did so in the belief that they were acting lawfully and within their legal rights to act, and without any intention of committing any unlawful conspiracy or of furthering any unlawful intent or purpose, then I charge you that the evidence would be legally insufficient to warrant the conviction of the defendants in this case. Refused. J. P.

"The Court: 40. This ought to be refused. It deals with belief as to the legality of the act."

41

The evidence in this case discloses that Group Health Association, Inc., received the amount of \$40,000 from the Home Owners Loan Corporation.

I charge you that, if the defendants believed that such payment was without authority of law and that the receipt of the same by Group Health Association, Inc., was wrongful, that the defendants would be lawfully entitled to act upon such belief in exercising their rights of legitimate persuasion and reasoned argument in opposition to Group Health Association, Inc., its doctors, members and operations, and in enforcing their laws, rules and regulations against members accepting employment with Group Health Association, Inc. Refused. J. M. P.

"The Court: I think this: I think it should be refused because a little misleading the way stated but, of course, if the \$40,000 was one reason which led you to argue against it, that is one thing. You can argue it on any reason you want, whether \$40,000, or what not, but the last part, 'in enforcing their rules and regulations against G. H. A.',—

"Mr. Kelleher: The point is that persuasion; it should be pointed out.

"The Court: That is my idea about it. I say here as to the next prayer, which deals with the same thing, stated in a different way—I say, 'They have a right to persuade,

et cetera, but that is not the issue; it is whether they conspired to restrain.'

"Mr. Richardson: Yes.

"The Court: You are trying to make a question of whether they argued and persuaded an issue in the case.

"Mr. Leahy: When you say they have a right to argue and persuade it seems like they have not if they cannot do it.

"The Court: I am not telling the jury that. I am going to refuse 41. I think the language is bad. I will make a note."

42

I charge you that, if you find from the evidence that the Comptroller General had held that the \$40,000 payment made by Home Owners Loan Corporation to Group Health Association, Inc., was without authority of law and such decision of the Comptroller was known to the defendants, that you would be entitled to take such knowledge into consideration in determining whether the acts committed by the defendants were within the limits of legitimate persuasion and reasoned argument. Refused. J. M. P.

"Mr. Richardson: And the same thing as to 42?

"The Court: It seems to me there seems to be some difference there.

"Mr. Kelleher: There isn't any evidence to show the Comptroller General so held.

"The Court: There is some indirect reference to that.

"Mr. Kelleher: Yes, but the direct evidence on the subject was excluded.

"Mr. Lewin: And the Comptroller General had no jurisdiction whatsoever.

"Mr. Kelleher: The point is this, that you are going to charge them that legitimate persuasion is all right.

"The Court: That word 'legitimate,' I often wonder what the courts mean by that. I think it means argument that has a reasonable foundation, reasonable basis. Wouldn't that be what they mean? Certainly they couldn't go out and slander and libel a person and justify as engaging in legitimate persuasion.

"Mr. Leahy: That is right.

"The Court: We can agree that they could not go out and by slander and libel put a merchant out of business. That

is what I think they mean; some foundation in truth and reason.

"Mr. Richardson: It is not quite clear from what you say whether it is proper to argue the \$40,000 item at all,

"The Court: My idea, of course, is this: In view of the fact that they had the right to argue and persuade, it doesn't make any difference that their argument involves the subject of \$40,000 or something else.

"Mr. Richardson: No, but in discussing their argument and persuasion can one refer to what they argued and persuaded about?

"Mr. Kelleher: How does that fact that there was a \$40,000 involved tend to show all they were doing was persuading and arguing?

"Mr. Richardson: Because from our standpoint it was the most extreme monkeying with Government money; practically embezzlement.

"The Court: The only thing you can say is, 'We did not intend to restrain. We argued against G. H. A., and we took our position against it, and we think it was legitimate argument; fair argument and persuasion, because we had circumstances which gave us a reasonable foundation and basis for that argument.' It seems that is as far as you can go.

"Mr. Richardson: If you cannot state what the basis of your argument and persuasion was, you are not saying anything. Here was this \$40,000 transaction. We believed it; we want to argue it.

"The Court: I have here—speaking about 42, 'Yes, they have a right to argue and persuade, but that is not an issue in the case. In other words they are not charged with the purpose to restrain G. H. A. by illegitimate argument and persuasion.'

"Mr. Richardson: Yes, but unless we are able to state the basis on which we did argue we are given the right to persuade and argue and then not permitted to argue about it, because the Government contends you did this for an illegal purpose and we cannot say we did it for a legal purpose.

"The Court: You can say you didn't conspire; you didn't restrain.

"Mr. Richardson: That is a pure conclusion.

"The Court: You can say, 'We didn't do anything but argue and persuade and we did that because there were circumstances justifying that.'

"Mr. Lewin: The reasons which you wish to argue are consistent with boycott:

"Mr. Richardson: All right, if the argument is consistent with boycott then we have a right to make our argument and let the jury decide whether it was argument and persuasion, or not. If you will let us state to the jury what the argument is, then we can get some decision as to what is reasonable persuasion.

"The Court: If you were merely indulging in exercising your right of argument and persuasion, all right; but if you agreed to conspire, all wrong. You are charged with conspiring, not with arguing. Nothing in here charges you with argument and persuasion.

"Mr. Leahy: Of course, as I understand your Honor's ruling, it is if we conspired we are guilty but we have a right to show what we did and why.

"Mr. Lewin: But you cannot go back to that \$40,000; that doesn't have a tendency to meet that issue.

"Mr. Richardson: Anything which operating on our minds led us to do something is legitimate in this case because we are charged with having done these things with a purpose in our mind, just exactly as your Honor held with reference to the letter that came here from Worcester, when you said you didn't care whether it was true or not; it furnishes a reason why these people did something.

"The Court: The issue there was this: Was it done arbitrarily, pursuant to the conspiracy, and that tended to show otherwise. It tended to show good faith in the rejection.

"Mr. Richardson: It is a perfect tendency. We are charged with having boycotted these people without any excuse whatsoever. We are charged that our refusal to put G. H. A. on the white list was an act done to further the conspiracy, and is one of the things that will be shaken in our faces. Now, then, if we refuse a demand under Section 5 because we believed this concern was handling Government money illegally, may we not say so?

"The Court: Then I have to reverse my whole position.

"Mr. Lewin: We are going to object to any argument about that. That is the reason it is in here.

"Mr. Richardson: Frankly, we put that in the case here because we think it is error. We want to increase the error.

Your Honor said we still could argue the question of \$40,000 as the reason why we acted, as an example of our persuasion and argument.

"Mr. Lewin: It might be boycott; that is why it cannot be argued.

"The Court: I think I will refuse it. We have been all over this."

43

I charge you that, if you find from the evidence that a committee of the House of Representatives reported to Congress that the \$40,000 payment made by Home Owners Loan Corporation to Group Health Association, Inc., was without authority of law and such report was known to the defendants and believed by them, the defendants would be justified in relying upon such report in the exercise of legitimate persuasion and reasoned argument in opposition to Group Health Association, Inc., its doctors, members and operations, and in favor of the interests of the defendants, their Societies, rules of ethics, the medical profession and the public interest. Refused, J. M. P.

"Mr. Richardson: Now, you are on 43.

"Mr. Kelleher: 43 is the same kind.

"The Court: Yes, I think that is the same thing, stated in another way.

"Mr. Kelleher: It is the House of Representatives.

"The Court: Oh, sure, refused."

45

I charge you that criticism by the defendants of, or opposition to, Group Health Association, Inc., its doctors, members and operations, is not unlawful and, without more, does not establish a criminal conspiracy under the Sherman Act, even if such opposition and criticism was done collectively by the defendants, because the defendant Societies, if they act at all in criticism or opposition, must act collectively, and such collective action, being lawful, is not in violation of the Sherman Act. Refused. J. M. P.

"The Court: Well, I have this, 'To be qualified.' You see, all this in my charge will go in under the right to criticize, oppose, et cetera, if it is not a part of the conspiracy to restrain, and I have it in my mind that the last part of this is argumentative."

"Mr. Kelleher: I don't know why they must act collectively.

"The Court: I think that prayer—I will refuse the prayer, and make a note to cover it. It is very argumentative."

46

I charge you that objection and criticism made by the defendants, if you so find, directed at Group Health Association, Inc., its doctors, members or operations, no matter how severe or, in the opinion of Group Health Association, Inc., its doctors and members, how unjust, is not unlawful and in itself does not constitute a violation of the Sherman Act, whether done collectively by the defendants in and through their medical Societies, or individually. Refused. J. M. P.

"Mr. Leahy: Then 46, follows 45; probably qualified the same way.

"Mr. Lewin: The same objection to it.

"The Court: I am going to refuse it. I have these grounds stated here:

'Collective criticism may be unlawful but would not violate statute.'

"Mr. Richardson: I don't see why 46 isn't a good statement of the law.

"The Court: No, collective criticism may be an unlawful thing; such as a concerted course of libel as I have spoken of. That would be an unlawful means. Not the purpose, but the means are unlawful.

"Mr. Richardson: Well, the idea is that you severely criticized someone; that the defendants had a right to severely criticize.

"The Court: Sure they did.

"Mr. Richardson: And it didn't make any difference then if they criticized collectively rather than individually.

"The Court: That is your thought, but you have it so phrased, 'is not unlawful.' It may be unlawful, if it involves slander, libel. I will work that in. I have a note here."

49

I charge you that any acts done or committed by the American Medical Association or by its officers prior to January 1, 1937, are only admissible in this case as fur-

nishing a background for a connection by American Medical Association with the alleged conspiracy. Such evidence cannot be used by you for the purpose of establishing the existence of the conspiracy itself as charged in the indictment. Such conspiracy, as here charged, must be established by evidence which convinces you beyond a reasonable doubt, wholly separate and apart from any acts committed prior to January 1, 1937. Refused. J. M. P.

"The Court: I think his prayer is subject to this criticism. You say such evidence 'cannot be used for the purpose of establishing the existence of the conspiracy itself.' I know exactly what you mean, but that is misleading. It is evidence in the case, that is why it is there. It is evidence tending to show power out of which a conspiracy could be effectuated. It is evidence in the case. Don't you see what I mean?

"Mr. Leahy: Yes.

"The Court: The way you have it stated there, it is not evidence.

"Mr. Richardson: Not evidence for the purpose of proving the conspiracy itself.

"The Court: It is not enough in itself; it is an evidentiary fact.

"Mr. Richardson: I think it only tends to show that the A. M. A. was only getting into the conspiracy because it disliked that sort of practice.

"The Court: I will refuse the prayer; I will revise the language and make a note to qualify it."

50

I charge you that a plan or purpose on the part of the defendants, either individually or collectively, to protect and defend their organizations, their rules and regulations and their principles of medical ethics from an attack thereon or opposition thereto coming from Group Health Association, Inc., its doctors, its members or operations, was not unlawful and would not constitute an unlawful conspiracy in violation of the Sherman Act. Refused. J. M. P.

"Mr. Richardson: I do not think there will be any objection to that.

"Mr. Kelleher: There is no evidence in the case of that.

"The Court: I do not just get it, myself. What I have here is that if the acts did not go to the point of conspiracy to restrain, if they did not intend to restrain, or if the natural consequences were not to restrain, they had a right to do those things.

"Mr. Richardson: It should be considered that neither the White List nor Section 5 nor any of these long meetings in reference to our own members would ever have transpired if they had not come into our house and tried to take away members in violation of our rules.

"Mr. Lewin: That is no attack.

"Mr. Richardson: It is an attack which, if successful, would ruin the Society. If our members can disobey and break our rules we might as well fold up and quit.

"The Court: Suppose your purpose was to do that, but the necessary effect of it was to restrain G. H. A.?

"Mr. Richardson: There would be no restraint under the Sherman Act resulting from protecting ourselves.

"Mr. Lewin: There was no boycott by Group Health against you.

"Mr. Richardson: There was an attempt to take away members in violation of our rules.

"Mr. Kelleher: This is an attempt to try to torture the principle of self defense into this case.

"Mr. Richardson: The Court has several times said that we have a right to do these things to protect ourselves.

"Mr. Lewin: Protect against what?

"Mr. Richardson: The loss of our members and the breaking of the rules.

"Mr. Lewin: You could have kept Lee and Scandiffio on your roster. The rules were illegal. That is an issue in the case.

"Mr. Richardson: No; there is no such issue, and you have never contended to the Court that the rules are illegal, and the Court is not going to charge the jury to that effect.

"The Court: If these things were done for the sole purpose of maintaining and supporting the organization and its rules—

"Mr. Richardson: That is what I mean.

"The Court (continuing:) —that would be lawful.

"Mr. Richardson: It is protective.

"Mr. Lewin: Provided the rules were not bad.

"The Court: I do not understand that any rules adopted were adopted during the conspiracy, were they?"

"Mr. Lewin: How about the White List?"

"Mr. Richardson: That antedated the conspiracy, too. It was brought out the first of May, on this testimony.

"Mr. Kelleher: July 12.

"Mr. Leahy: Section 5 was adopted in 1935.

"Mr. Lewin: As applied here it was adopted on March 3, 1937.

"The Court: I think I have the right idea about this. I think I will refuse it as it is and work it out. I do not like the language of it. I am refusing it."

51

I charge you that the defendant members of the District of Columbia Medical Society and such Society had a lawful right to adopt the resolution of December 1, 1937, relating to the recommendation by the District Medical Society to have the medical staffs of the hospitals confined to its members and to transmit such resolution to the hospitals as legitimate persuasion and reasoned argument for the purpose of inducing and persuading the hospitals to so agree and act, and the transmission of such request to such hospitals without more, would not constitute an illegal threat or unlawful coercion, as against such hospitals, and would not be in violation of the Sherman Act. Refused.

"The Court: What do you think about No. 51?"

"Mr. Lewin: I think it is undue emphasis again on a false issue:

"Mr. Kelleher: It is calculated to persuade the jury to believe that they could use that sort of persuasion.

"Mr. Leahy: We had a right to do this as legitimate persuasion and argument.

"The Court: I have got this note here: 'Granted,' with a little question mark, and then—

"Yes, if not part of a conspiracy, if not intended to coerce,' and so forth. I think the language is a little off.

"Mr. Lewin: I am sure that the same idea has been undertaken in former prayers.

"The Court: There seems to be a lot of these.

"Mr. Richardson: This refers to the resolution of December 1st, and it is the only one that refers to that resolution.

"The Court: You want to say that all you intended by this was to give to the hospitals reasoned argument, and that you had a right to do it, and that is all?"

"Mr. Richardson: Yes.

"Mr. Lewin: But of course if they went down there to persuade those hospitals to keep all Group Health doctors out because they were Group Health doctors——"

"The Court: I do not think it means that.

"Mr. Lewin: That was at the same time they were expelling Scandiffio.

"Mr. Kelleher: That is the trouble with it, your Honor.

"Mr. Richardson: They were only expelling Scandiffio because he broke the rules; that was all.

"Mr. Lewin: I think it gives too much emphasis to this. I do not think the Court of Appeals meant it to be done in this case, that is, boycott.

"Mr. Leahy: You call it boycott all the time.

"Mr. Richardson: Every man that shoots another murders him.

"The Court: Suppose the doctors, members of organized medicine, pursuant to their belief that this would work to the betterment of the public interest in giving further assurance of proper doctors on the medical staff, adopted such a regulation as this and then went to the hospitals and said, 'Don't you think that would be wise for the benefit of your hospital and the practice of medicine?'

"Mr. Lewin: It would be an illegal attempt to monopolize.

"Mr. Leahy: Not the slightest.

"The Court: Suppose the jury believes that to be reasonable, in view of the fact that it involved the staffs of hospitals to which the public must go for operations and upon whom they must depend for operations. There undoubtedly is fair reasoning back of it.

"Mr. Richardson: It is uncontradicted in the testimony.

"Mr. Kelleher: There is not anything that shows it is reasonable.

"Mr. Richardson: There is not a man who testified that did not testify that it was a good thing.

"Mr. Leahy: There are lots of doctors who are not on the staffs of hospitals.

"The Court: Is there any reason why doctors might not, by argument and persuasion, attempt to induce the hospitals to adopt that as a reasonable regulation? It comes down

to whether or not, under the conditions, it would be reasonable, of course.

"Mr. Kelleher: Under the Paramount case it does not make any difference how reasonable a regulation is; if it is one that shuts a man out it cannot be done."

"Mr. Leahy: They can shut a man out individually, and they have done it.

"Mr. Lewin: They cannot do it by rule or regulation.

"Mr. Kelleher: When you get these doctors working on it you get collective action by the hospitals.

"Mr. Leahy: Oh, no; not at all."

Thereupon the following took place:

"The Court: Maybe we had better come down tomorrow and finish this. I do not believe we are going very far. I am tired.

"Mr. Leahy: Can you not work this out and let us know?

"The Court: Yes; I can do that. But you would not know what I had worked out. I can probably have a little session with you on Wednesday morning and indicate it to you. I think I know your arguments pro and con pretty well now. You might meet me here at 9:30 on Wednesday morning and I can indicate to you. If I can have a whole day to myself I may be able to clarify this thing in my mind so that I can indicate to you very clearly how I am going to handle it. But I am too tired now.

"Mr. Lewin: I think you know our position."

Thereupon the defendants offered the following prayers and instructions:

54

I charge you that the public is concerned with the maintenance of professional standards which will insure not only competency in individual practitioners, but protection against those who would prey upon the public peculiarly susceptible to imposition through alluring promise of physical relief, and the public is concerned in providing safeguards not only against deception but against practices which would demoralize the profession by forcing its members into an unseemly rivalry which would enlarge the operations of the least scrupulous. What is generally called the ethics of the profession is but the consensus of expert

opinion as to the necessity of such standards. Refused.
J. M. P.

55

I charge you that the defendant District Medical Society may lawfully provide and keep a list of organizations whose plans of medical service have been approved by the defendant Society and that such list may be kept not only for the use of the members of the defendant District Medical Society but also as notice to others, and the public generally, what organizations and methods of practice have been approved, and the fact that Group Health Associations, Inc., its doctors, members, and operations might be hindered or restrained as a result of such list and the publication thereof would not, of itself, constitute a violation of the Sherman Act. Refused. J. M. P.

56

The defendant members of the District Medical Society had a right to agree among themselves by duly constituted Society action that the Constitution of the Society should contain a provision forbidding members to have professional relationships with organizations (believed by it to be) engaged in the practice of medicine until such particular organization and its operations had first been approved by such Society, and I further charge you that, if, after having adopted such a provision and while the same was in force, any member violating the same might be properly subject to disciplinary proceedings, and to expulsion from the Society, if the Society, after due proceedings, should so determine.

Membership in the Society is conditioned upon obedience to the lawful rules of the Society and disobedient members have no right to insist upon securing the rights and advantages of membership without at the same time remaining in obedience to the lawful rules of such Society. Refused. J. M. P.

57

Each of the Washington hospitals had the right, if it might so choose, to take into consideration in passing upon the qualifications of applicants for membership upon its medical staff, the ethics as well as the professional qualifications of such applicants, and might thereafter grant

or refuse any applicant upon any ground or reason which might, to the particular hospital seem to it desirable, proper or necessary. Refused. J. M. P.

60

Evidence has been permitted in this case with respect to the public need or lack of need of so-called low-cost medicine. I charge you that any need, or lack of need, for a low-cost-medicine plan, has nothing to do with the right of the defendants to exercise their lawful powers and duties in connection with the practice of the medical profession. The rights of Group Health Association, Inc. are no greater because of an alleged need for low-cost medicine, than if no such need existed. Group Health Association, Inc. had a lawful right to disapprove of what it may have thought was the attitude of the defendants toward low-cost medicine plans, just as the defendants had an equal right to disapprove of what the defendants thought was the attitude of Group Health Association, Inc. with respect to low-cost medicine plans. Each party to the controversy had the right to further and advance its own opinion in the controversy by all methods of legitimate persuasion and reasoned argument whether applied to members of the medical profession, the Washington hospitals, or the public. Refused. J. M. P.

61

I charge you that if the defendants in good faith believed that the plan and operation of Group Health Association, Inc. was not economically sound and that the result of such economic unsoundness would not be in the public interest, that you would be entitled to consider such belief on the part of the defendants in determining whether the defendants acted reasonably in doing or committing the acts, which, from the evidence, you may find they did commit. Refused. J. M. P.

63

Evidence has been offered concerning acts done in relation to certain Milwaukee hospitals. I charge you that it would be improper for you to find any of the defendants guilty by reason of your conclusion concerning such Milwaukee matter. Such evidence was admitted solely as a

so-called background which might serve to explain other testimony in the case, and such Milwaukee testimony must be only so considered by you. Whether any of the defendants acted wrongfully in the Milwaukee matter is not for you to decide in this case. Refused. J. M. P.

64

I charge you that if the defendant District Medical Society and the defendant members thereof were advised by counsel that Group Health Association, Inc. was a corporation and as such was illegally engaged in the practice of medicine defendant Association could lawfully provide by constitution, by-law, rule or regulation that its members should not render medical services to Group Health Association, Inc. or through Group Health Association, Inc. to its members; and could lawfully expel any member who violated such constitutional provision, by-law, rule or regulation. Such expulsion under such circumstances would not be a violation of the Sherman Anti-Trust Law. Refused. J. M. P.

65

I charge you as a matter of law that if you find from the evidence that a dispute or controversy existed between the defendants as physicians and medical associations of physicians, and Group Health Association, Inc., its physicians, other physicians seeking employment with Group Health Association, Inc., and its members, concerning terms or conditions of employment or concerning the association or representation of defendants in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment pertaining to the practice of medicine and the care and treatment of patients by physicians, including hospitalization, and further find that the defendants and all other parties to the dispute or controversy, including the Washington hospitals, have direct or indirect interests in the same trade or occupation, and further find that the defendants acted in self-interest, and further find that the defendants acted peacefully and without violence, then you must return a verdict of "Not Guilty" as to all defendants. Refused. J. M. P.

66

I charge you that an unlawful combination and conspiracy is the confederation and agreement of two or more persons

for an unlawful purpose or to accomplish a lawful purpose by illegal means. In this case the combination and conspiracy charged in the indictment if illegal must be found to be so because of an illegal purpose as there is no allegation or proof of any means in and of themselves illegal. In order to find an illegal combination and conspiracy you must find from the evidence that the restraints charged and proved beyond a reasonable doubt did or could operate to suppress competition in trade in the District of Columbia. The gist of a charge of conspiracy is agreement. If you find no agreement was entered into and agreed upon by the defendants that did or could operate to suppress competition in trade in the District of Columbia then you must return a verdict of "Not Guilty" as to all defendants. Refused. J. M. P.

"The Court: 59. That is granted.

62. That is granted. I don't like that term "per se" for a jury. I would prefer to speak of it as "of itself."

58. That is granted.

53 is granted, as amended. That is the one we stopped on. There is little amendment there. "The defendants can lawfully combine to support the medical organization." I have just struck out the term "conspire;" that is a bad use of the word; "conspire" does imply criminal acts.

"Mr. Kelleher: I wonder if I could question that.

"The Court: Well, you haven't much time.

"Mr. Kelleher: Isn't it true that they can combine to persuade for any purpose?

"The Court: Let us see. "The defendants . . . by persuasion and reasoned argument and by any other lawful means." That is too broad. The purpose here, of course, would be lawful. I think it is a good prayer. I mean when you read it along with the other prayers, it will work out. Just standing alone I think it is all right. Of course, I have been oppressed by these prayers; there are so many of them.

63. That is refused, the way it is stated. What have you got to say about that?

"Mr. Kelleher: Concerning the Milwaukee situation: that is power, purpose and general plan and scheme.

"The Court: I don't see how you could apply the general plan and scheme done in another place at another time.

"Mr. Kelleher: This Milwaukee thing is contemporaneous.

"The Court: That doesn't make any difference.

"Mr. Kelleher: If they had a general plan to force doctors throughout the United States out of hospitals, through this Mundt Resolution, the enforcement of that here would be material.

"Mr. Richardson: We are dealing with only one defendant in a conspiracy. When you did a certain act it might have had a certain purpose, but it doesn't establish the conspiracy and the purposes. They couldn't possibly find the local defendants guilty on the basis of what was done in Milwaukee.

"The Court: There isn't anything at all to connect the local defendants with that scheme or plan, whatever it may be. They were not interested in the outside activities of the American Medical Association concerning this plan. They were only interested in the local situation.

"Mr. Kelleher: We only offer it against the A. M. A. and Dr. Cutter, to show what he was doing when writing to these hospitals concerning the Mundt Resolution.

"Mr. Richardson: The only point would be when he wrote Milwaukee the Government will say he was using the Mundt Resolution to coerce.

"The Court: I will refuse the prayer. As stated, it is bad.

"Mr. Richardson: Something ought to be stated to show—

"The Court: I know. I may, if I can get time to construct some sort of a charge. You say this applies to the A. M. A. and Cutter only, this "intention, et cetera"?

"Mr. Kelleher: Intention, purpose and plan.

"The Court: Intention and purpose are the same.

"Mr. Kelleher: That is right, intention and scheme.

"The Court: Intention and plan.

66 is refused. 65 is refused. 64 is refused. 61 is refused. 60 is refused. 57 is refused. 56 is refused. 55 is refused. 54 is refused. Doesn't that cover them all?

"Mr. Richardson: I have 52 marked "Hold." It has not been discussed this morning.

"Mr. Kelleher: I would suggest it might be all right. We have no objection to 52.

"The Court: I have already covered that. I understand you are going to undertake the whole argument, Mr. Leahy?

"Mr. Leahy: Yes, I think so.

"The Court: If you want those prayers to go before the jury, I wish you would read them, or have one of your colleagues do so; the ones that are granted. It fits in better with your argument.¹⁰ Secondly, it gives me an opportunity then to present my charge in which will be incorporated in substance the prayers, but not verbatim, thereby shortening my charge and smoothing it out. In it I will say that I granted certain instructions at the request of counsel "that have been read to you and you will consider them as proper statements of the law." That will be a great help to me.

"Mr. Kelleher: I don't know whether that is directed to us also, because we had not intended to read any of the instructions.

"The Court: Well, I don't think it is so appropriate or necessary for you to do so; I have covered the substance of everything.

"Mr. Kelleher: Then there will be no burden on us to do so if we do not wish to?

"The Court: No, I will give the substance.

"Mr. Magee: Is it understood that we have an exception to each prayer overruled?

"The Court: Yes. Of course, there were some prayers of yours which the record shows were amended with your approval. As to these, of course, I assume there is no exception to the refusal of the original prayer."

The objections of the United States as stated hereinbefore were sustained, and defendants' prayers or requests for instructions to the jury numbered 1, 2, 3, 5, 6, 8, 9, 10, 14, 15, 16, 17, 18, 23, 31, 32, 33, 36, 38, 40, 41, 42, 43, 45, 46, 49, 50, 51, 54, 55, 56, 57, 60, 61, 63, 64, 65, and 66 were denied and an exception allowed the defendants.

The Charge to the Jury

The Court: Members of the jury, counsel for the respective parties have submitted to the Court many so-called prayers which are simply written requests to the Court to instruct the jury in particular matters on the law applicable to the case. Those prayers have been considered and quite a list have been granted by the Court as correct statements

¹⁰ The Court later informed counsel that the instructions granted would be read by the Court in the charge.

of the law. It will be necessary for me to read them to you. First, I will deal with the prayers in behalf of the Government.

The burden of proving the defendants guilty is upon the Government. This does not mean, however, that the Government's proof must establish the defendants' guilt to an absolute certainty. You may find the defendants guilty, if you are convinced beyond a reasonable doubt of all the essential facts necessary to establish the guilt of the defendants.

A reasonable doubt must be real and not imaginary. It must be an honest and substantial misgiving for which a good reason may be given, based upon the nature of the evidence or lack of evidence in the case. If all the evidence in the case, impartially and reasonably considered, produces in your minds a settled conviction or belief of the defendants' guilt—such an abiding conviction as you would be willing to act upon in the most important affairs of your own life—you may be said to be free from any reasonable doubt, and should find a verdict in accordance with that conviction.

In considering the testimony, you should, as to each witness, consider his demeanor and manner of testifying, his interest, if any, in the result of the trial, any temptation to testify falsely, his opportunity to know the facts, the probability or improbability of the testimony given, and all other like circumstances appearing from the evidence; and from all these you should determine the weight and credit to be given to the testimony of the witness. If you believe that any witness has wilfully testified falsely to a material fact, you may disregard all of the testimony of that witness, or give credit to such part thereof as you deem it warrants.

The fact that the defendants may have believed Group Health illegal is not material to the case. A mistake of law will not excuse a violation of the Sherman Act. The fact that the defendants may have had an honest and reasonable belief that Group Health Association was operating illegally would not constitute any justification to violate the law. If you find the defendants were engaged in a combination as charged, it is unnecessary for you to decide whether Group Health Association or its staff may have violated the principles of medical ethics of the American Medical Association, if such were the fact. It is immaterial that Group Health Association may have employed doctors on a contract basis,

or that the members of Group Health Association may not have had complete freedom of choice of physicians from the entire body of doctors practicing in the District of Columbia, or that Group Health Association or its organizers may have solicited Government employees to join Group Health Association. It is likewise immaterial to the issues which you must decide that the defendants may have believed that Group Health Association or the members of its medical staff violated the Principles of Medical Ethics of the American Medical Association.

If you find that the defendants were engaged in a combination as charged, it is unnecessary for you to decide whether the medical care given by the medical staff of Group Health Association was equal to, superior to, or inferior to, the quality of medical care rendered by doctors engaged in private practice. That is immaterial to the issues in the case.

If you find that the defendants were engaged in a combination as alleged, it is unnecessary to decide whether Group Health Association was financially sound. The financial condition of Group Health Association and the sources of its financial support during the period of the conspiracy are immaterial to the issues in this case. It is also immaterial that the defendants may have believed that Group Health Association was financially unsound or that it was subsidized by other organizations.

The Sherman Act prohibits combinations unreasonably in restraint of trade. This prohibition extends to undue restraints upon the furnishing of medical service to the public. If you find that the defendants conspired together for the purposes charged and employed the means charged, and if you find that the defendants, in seeking to achieve those purposes, intended to prevent Group Health Association from competing with doctors engaged in private practice on a fee-for-service basis in furnishing medical care to members of the public eligible for membership in Group Health Association, then the defendants were engaged in a combination in restraint of trade.

If you find a conspiracy to exist, all acts and declarations, oral or written, of each party to the conspiracy, in furtherance of the objects, may be considered as evidence against all of the parties to the conspiracy. This is true even though the party doing such act or making such declaration is not on trial or is not named in the indictment as a defendant.

That is, every person who, knowing of the conspiracy, does any act or makes any statement intended to further the objects thereof, does thereby become a party to the unlawful conspiracy.

It is not necessary that all of the parties to a conspiracy shall actually meet together at one and the same time and place, or that all discuss its purposes or the means of carrying out its objectives, or whether each party knows all the others. Nor do you need to find that all combined together at the start of the conspiracy. If it is shown that the conspiracy was entered into between two or more of the defendants and that at any later time during its existence new or additional parties, while aware of its existence, united with them for the purpose of aiding in the accomplishment of the scheme, they would then become conspirators too and responsible for the consequences thereof.

In determining whether a conspiracy exists it is not necessary to find there was a written or formal agreement among the defendants, or that any participant was bound to another to perform any particular portion thereof. It is sufficient if you find from the evidence that the defendants were voluntarily acting together, however informally, in order to carry out the common objective. Notwithstanding the fact that all of the defendants are charged to have participated in the offense, it is not necessary for the Government to prove that all did so, and you are not required to find all guilty. If you find that the offense charged was in fact committed and that some of the defendants on trial were parties to it, you may convict those whom you so find guilty and acquit the others.

That completes the reading of the instructions on behalf of the Government.

These are instructions granted at the request of the defendants:

The defendants and each of them are presumed to be innocent of the crime charged to them and each of them in the indictment. This presumption surrounds and remains with each throughout the entire trial and should be considered by you in determining the guilt or innocence of each.

Before a verdict of Guilty can be returned against the defendants or any of them the evidence of the Government must not merely indicate guilt, but it must be inconsistent with any rational theory of innocence. Thus, if the jury

finds from the evidence what the defendants did is just as consistent with innocence as with guilt, then the verdict must be Not Guilty as to those defendants.

The defendants had the lawful right to combine and form corporations and associations for the improvement of the practice of their profession and to advance their interests. They had the right to make reasonable rules and regulations respecting their profession and to ascertain the qualifications and character of their members. They had the right to discipline members who failed to abide by the regulations or rules adopted by the associations in the formation thereof and to suspend or expel from membership any member who failed to abide by the rules and regulations. The fact that the defendants adopted such rules and regulations and disciplined members does not of itself constitute an unlawful combination in violation of the statute. They must have combined together with the intent to injure, obstruct or restrain trade, or they must have intended to do acts the necessary effect of which would be to injure, obstruct or restrain trade.

The individual defendants as physicians had a right to determine with what other physicians they would consult, and their refusal to consult with any particular physician is not of itself illegal.

Physicians have the right to select the hospital in which they choose to treat and operate upon their patients; and the refusal of a physician to do business with any hospital because of the composition of its courtesy staff is not of itself illegal.

The defendants American Medical Association and Medical Society of the District of Columbia have the right to adopt rules for just and fair dealing among their members and the right of enforcement of those rules and regulations by such reasonable penalties as they may provide for violation thereof.

The defendants had the right to reach and attempt to reach their objective of advancing the interests of the medical profession by legitimate persuasion and reasoned argument, and to this end they had the right to tell their side of the story and to persuade others, including the Washington hospitals, other physicians, members of Group Health Association, Inc., and the public to utilize and use defendants' method of practicing medicine, and to use peaceful persuasion, publicity, articles in the press, in publications

of defendants, including the Journal of the American Medical Association, and all lawful propaganda to have their methods of practicing medicine prevail over those of Group Health Association.

The defendants had the right to write letters or other statements among themselves or to other members of the profession or to the public generally, expressing disapproval of or opposition to Group Health Association and the form of medical service offered by it.

The defendants were entitled, through legitimate persuasion and reasoned argument, to endeavor to support and advance the interests and extension of that type of medical practice believed by the defendants to be in the public interest, without regard to whether such acts hindered Group Health Association, its doctors, members or operations, or any other type or method of medical practice. If they did not go further to conspire to restrain Group Health Association there would be no offense.

I charge you that the defendants have the lawful right, through action taken in their meetings and conferences, to formulate and adopt rules of medical ethics for the control and government of themselves and the members of their societies in the practice of their profession, and the support and maintenance of such principles of medical ethics by legitimate persuasion and reasoned argument or by enforcement of Society rules, laws and regulations, without more, would not constitute unreasonable restraints against Group Health Association, its doctors or members.

Any doctor who voluntarily joined the defendant Medical Societies was required to comply with the constitution, rules and regulations thereof. No doctor would have the right, as against the wishes of the particular society, to retain membership therein regardless of how valuable or advantageous such membership might be to him, and at the same time wilfully violate any provision of its constitution, rules or regulations.

If a doctor desires to retain membership he is bound to obey the constitution, rules and regulations, since membership therein is entirely voluntary; and if, as a result of his non-observance, he suffers discipline and possible expulsion from the society, any injury, damage or restraint thus suffered by him or by any corporation by which he might have been employed would, without more, not constitute a violation of the statute.

The Washington hospitals are private institutions under private management and control, and the lawful authority to constitute the medical staffs of such hospitals is vested in the governing board thereof. Hospitals have a lawful right to make such reasonable rules and regulations for the operation of the hospitals as to the authorities thereof may seem in their best interests. They are lawfully entitled to require obedience to such rules and regulations by all persons dealing with said hospitals, including doctors permitted by the hospitals to practice their profession therein.

The Washington hospitals had the lawful right, if they so desired, to adopt and enact a rule confining their medical staffs to members of the local medical societies, and any restraint resulting thereby to Group Health Association, its doctors, members, or operations would not in itself be a violation of the Sherman Act.

A member of the medical profession duly authorized by law to practice his profession in the District of Columbia is not by reason thereof entitled to practice in any of the private Washington hospitals. Permission to practice in such a hospital is not a right on the part of an applicant doctor, but is only a privilege which can be extended or withheld from him at the will of, or in the discretion of, the particular hospital.

If the Washington hospitals or any of them believed that it was in the best interests of such hospital to adopt and enforce a rule confining appointments to the medical staff to members in good standing of local Medical Societies, any such hospital had a lawful right to adopt and enforce such rule, and any resulting injury or restraint occasioned thereby to a particular doctor or other person would not be a violation of the statute.

The defendant American Medical Association had the lawful right, upon request of a hospital, to inspect it for the purpose of approving or disapproving it for interne or resident training, and it had a lawful right to approve or disapprove such hospital based on the inspection so made.

The American Medical Association was lawfully entitled to present for the consideration of the hospitals inspected the so-called Mundt Resolution concerning the selection of medical staffs exclusively from the members of local Medical Societies, and such action on the part of the American Medical Association would not of itself constitute an act of coercion as charged in the indictment.

Where the evidence in the case is in whole or in part circumstantial in its nature, the circumstances relied upon by the Government to establish the guilt of the defendants must so distinctly indicate the guilt as to leave no reasonable explanation consistent with innocence.

Facts which give rise to a reasonable and just inference that a conspiracy existed do not necessarily exclude every other reasonable hypothesis unless it can be said that only one just and reasonable inference may be drawn from the given state of facts.

The Medical Society of the District of Columbia is shown by the evidence to have been a component and constituent society and member of the American Medical Association. As such it was entitled to contact, communicate and advise with the officers and representatives of the American Medical Association with reference to matters affecting or relating to the practice of medicine, and such intercourse between the societies is not a violation of the Sherman Act.

If the defendants had objections to Group Health Association and the type of medical practice proposed by it, and believed that the system of medical practice approved by the defendants was better and more in the public interest, then the defendants were lawfully entitled, either individually or collectively, through legitimate persuasion and reasoned argument, either publicly or privately, to urge any and all persons to come to the support of the objectives of the defendants and to disapprove the objectives of Group Health Association, and any resulting restraint, injury, or damage to Group Health Association, its doctors, members or operations is not in violation of the law.

The defendant Woodward had a lawful right to prepare an article or a memorandum disapproving Group Health Association and matters relevant thereto, and to cause the same to be published by the American Medical Association in its Journal, and to do so, without more, would not be a violation of the Act on the part of Woodward or the American Medical Association.

The defendant Fishbein, the editor of the Journal of the American Medical Association, had a lawful right to publish in the Journal objections to Group Health Association and its proposed methods of medical practice; and such publication of articles criticizing Group Health and its plan for medical service, even though it may have restrained or injured Group Health Association, its doctors or mem-

bers, standing alone and without more, would not make Fishbein guilty of a violation of the Act.

The American Medical Association and its officers had the lawful right to receive and answer inquiries concerning various so-called contract medicine plans, and the American Medical Association and its officers, in answering such inquiries, were lawfully entitled to state their own conclusions and beliefs with respect thereto, whether favorable or otherwise, and by so doing, without more, the American Medical Association and its officers would not violate the statute.

Evidence has been admitted tending to show the size and scope of the activities of the American Medical Association. Such fact does not raise any inference of wrongdoing or guilty conduct. Whether the American Medical Association is a large corporation or a small corporation does not affect its lawful right under the law; and the evidence is admitted here only for the purpose of showing the possible power, if any, of such corporation to induce and further the alleged illegal conspiracy set forth in the indictment.

A defendant does not become a party to a criminal conspiracy simply because he is a member of an association which might so conspire, or because he attends meetings of such organization where such conspiracy may be discussed, nor does he become a party to such conspiracy because he has knowledge of its existence or because he may ever approve such conspiracy and its unlawful purpose. Before he can be found to be a member of a conspiracy it must appear that he knowingly and intentionally participated therein with the purpose and intention of aiding and furthering it; and you must find, before you can convict such defendant, that such intent existed beyond a reasonable doubt.

It is not unlawful to conspire and combine to effectuate a lawful purpose by lawful means. The defendants could lawfully combine to protect and support their medical organizations, their methods of professional practice, and the principles of medical ethics, by legitimate persuasion and reasoned argument or by any other lawful means.

There is nothing illegal of itself in enacting the so-called Mundt Resolution. The question is whether such resolution was intentionally used in order to aid in the carrying out of an illegal conspiracy on the part of the defendants. Nor

would the fact that the Mundt Resolution was called to the attention of the Washington hospitals, in order to further the wishes of the American Medical Association in carrying out its purpose, be either improper or unlawful, unless you also find, beyond a reasonable doubt, that such acts were intentionally done to aid an illegal conspiracy then and there existing in the District of Columbia.

That, ladies and gentlemen, completes the reading of the instructions which were requested by counsel and granted by the Court.

And now may I, at the risk of some repetition, in my own way briefly outline the case to you and summarize some phases of the law which I deem important to guide you in your consideration?

The Act of Congress under which the indictment is brought makes illegal and punishable every combination or conspiracy in restraint of trade in the District of Columbia. The practice of medicine and the operation of hospitals and organizations to provide for medical care fall within the term trade as used in the Act.

The indictment charges a violation of the statute by the corporations, associations and individuals named in Article I thereof. You will have the indictment. It will inform you with particularity of the names of all the defendants and of the offense with which they are charged.

The case has terminated as to Thomas Allen Groover by reason of his death, and as to Harris County Medical Society, Washington Academy of Surgery, Leon Alphonse Martel and Joseph Rogers Young by the verdicts rendered at my direction.

For brevity, I shall refer to the American Medical Association as the American Association; the Medical Society of the District of Columbia as the District Society; and Group Health Association, Inc. as Group Health.

It is the duty of the Court to state the law of a case to the jury, and the duty of the jury to accept and follow the law as it is given by the Court. This, I am sure, you will do.

The indictment, and the action of the Grand Jury in returning the same, are no evidence of guilt. The defendants are not called upon to prove their innocence. They are presumed to be innocent and that presumption abides with them as a shield against conviction until and unless in your final judgment the evidence establishes guilt beyond a rea-

sonable doubt. Therefore, the burden rests upon the Government to prove guilt according to the charge laid in the indictment.

What is reasonable doubt, as that term is used in the trial of a criminal case? It is a doubt based upon reason; such a doubt as after a full and fair consideration of all the evidence, will leave a juror so undecided as that he cannot conscientiously say he has an abiding conviction of guilt, that is, a settled conviction; which he feels will abide with him in the future, so that if, perchance, his thoughts recur to his action in joining with his fellow jurors in a verdict of guilty, he will, in his own reflections, be justified in mind and conscience that he did the righteous thing.

Although proof beyond a reasonable doubt is necessary, that does not imply proof beyond all doubt and to an absolute certainty. Yet as a fair shield of protection to one accused of crime, the law does insist that before he shall be deprived of his good name and suffer the penalties of a criminal conviction his guilt shall be established by a measure of proof which leaves no reasonable doubt. The evidence must exclude any rational theory of innocence and admit only of an abiding belief in guilt. Hence, if an inference may be fairly drawn, as consistent with innocence as with guilt, a reasonable doubt would necessarily prevail. This is especially so in dealing with evidence of a circumstantial nature. Where such evidence is relied upon to prove essential elements of the charge, it must so clearly point to guilt as to exclude any rational theory of innocence.

Here in the case at bar the charge is that the defendants conspired to restrain trade in certain specified ways. A conspiracy takes form when two or more persons combine to do an unlawful thing, or to accomplish something of a lawful nature by unlawful means. Where such an agreement or understanding, however informal, is reached, all those who join therein become parties to the conspiracy. The object or the means to attain it must be illegal. There can be no criminal combination where both the object and the means are lawful. It is not essential that all details to carry out the plan be specifically arranged, or the particular acts of each be definitely assigned. It is enough if there has been a meeting of minds for concerted action to gain the common end. All need not know each other or meet together at any one time; nor need all combine at the start

of the conspiracy. If two or more have done so, others with knowledge thereof may become participants at future times, while the conspiracy still continues, by uniting in the common design with the purpose to lend their encouragement and support to accomplish the same. Upon thus joining a conspiracy they render themselves liable not only for their own overt acts; but for those of other members to the enterprise. Hence, it is not necessary that all defendants take part in the unlawful acts charged in furtherance of the conspiracy or to know about the same. One may also be liable for an overt act, though actually performed by another, if he knowingly instigates or supports the same by advising, encouraging or abetting it. So, if the alleged conspiracy is found from the evidence to exist, the acts and declarations of each party, shown to be a conspirator, in furtherance thereof, may be considered by the jury in determining the guilt of others who are accused.

However, you will understand that guilt does not attach to one who merely knows of a conspiracy or of acts in furtherance thereof, even though done in his presence. A passive knowledge or attitude is not enough. There must be actual and conscious union with the criminal group. Therefore, membership in the defendant medical societies; presence at their meetings; knowledge of an unlawful plan or purpose among other members, if such there be, would not alone make one a participant. Besides such knowledge there must be the positive intention to give adherence and support to the criminal scheme. Those are brief statements of some rules of law of a general nature to be applied in your consideration of the case.

The indictment itself is very long. That, as you know, is a formal accusation of crime. Much of it is devoted to allegations descriptive of the defendants, as also of the Washington hospitals and Group Health. There are extensive allegations of acts done to effectuate the objects of the alleged conspiracy. All these matters have been frequently referred to during the trial, including the arguments of counsel, and need not be stated again in any detail.

An essential part of the indictment, important to understand, is that which specifically charges a violation of the statute. In substance it is alleged that the defendants conspired:

1. To restrain Group Health in its business of providing medical and hospital care to its members and their dependents on a risk-sharing prepayment basis;
2. To restrain doctors on the staff of Group Health in pursuit of their calling;
3. To restrain other doctors in the District of Columbia in the pursuit of their calling, and
4. To restrain the Washington hospitals in the business of operating such hospitals.

It is further alleged that the plan and purpose of the conspiracy was:

To hinder and obstruct Group Health in procuring and retaining qualified doctors and those doctors from consulting with other doctors and specialists practicing in the District by threatening with disciplinary action members of the District Society who should become members of the staff of Group Health or who should consult with members of that staff. Further, it is alleged the plan and purpose was to hinder and obstruct Group Health in obtaining access to hospital facilities for its members, and the doctors of Group Health from treating their patients in the hospitals.

These purposes, it is alleged, were to be attained by certain coercive measures against the hospitals and doctors designed to interfere with employment of doctors by Group Health and use of the hospitals by members of its medical staff and their patients. The plan is fully detailed in the indictment and has been referred to by Government counsel in their arguments.

To sustain that charge the Government must prove beyond a reasonable doubt that a conspiracy did in fact exist to restrain trade in the District in at least one of the several ways alleged, and according to the particular purpose and plan set forth. If the evidence fails to convince you of that basic element the charge will necessarily fall with resultant acquittal of all defendants. If you find that fact established, then you will consider the evidence in particular relation to each defendant, to determine whether it does prove beyond a reasonable doubt that such defendant was a party to the conspiracy. If you do so find, then that defendant should be convicted, but if a reasonable doubt of guilt prevails you will acquit.

The opposing contentions may be roughly stated as follows:

The Government claims that the evidence proves the medical societies were opposed to Group Health and its plan of group medical care on a fixed prepayment basis; that they feared competition by that method of practice as against the fee-for-service method of organized physicians; that to obstruct and destroy such competition the medical societies, with certain officers and members and the hospitals, conspired to prevent successful operation of Group Health's plan by imposing restraints on physicians affiliated with Group Health, through threats of disciplinary action and expulsion; by denying them professional contacts and consultations with other physicians, and by means of the societies' power, coercing the hospitals to deny Group Health doctors facilities for treatment of their patients. The plan, it is contended, was carried out by enforcing compliance with the so-called Mundt resolution of the American Society, the amendment of March, 1937, to Section 5 of the District Society's constitution, implemented by the "White List" and aided by corporate and individual acts of defendants.

On the other hand, the defendants insist there was no conspiracy; hence, no conspirators; that there was no purpose or plan to restrain Group Health, the hospitals or doctors; that their acts were intended only to oppose Group Health by legitimate argument and persuasion; that no coercion was practiced or intended against the hospitals, and that the "White List" and disciplinary proceedings against members of the District Society represented reasonable action taken by authority of their constitution and rules to protect the organization and its standards of medical practice. Therefore, it is claimed, in behalf of the defendants, that if those actions did interfere with Group Health and its doctors, the effect was but an incidental and indirect result of acts taken legally and in good faith for legitimate ends; and therefore were not wrongful or illegal.

If you believe the contention of the Government is established beyond a reasonable doubt, then the conspiracy is made out; whereas, if the contention of defendants prevails, the charge would altogether fail.

In the light of these contentions and the arguments supporting them, you will review the evidence fully and

impartially to determine whether it does prove beyond a reasonable doubt the charge laid in the indictment.

Was there a conspiracy to restrain trade in one or more of the ways alleged? If so,

Who of the present defendants were parties to the conspiracy? All; or some; or none? To decide that question you will need to examine the evidence independently as it relates to each defendant. As to the corporate defendants, they would be responsible if authorized officers, acting for or in the name of the corporation, did acts within the apparent scope of the corporate powers, in forming or furthering the alleged conspiracy.

Did there exist the criminal intent? That is, was there a purpose and plan as charged? That would be so if in fact the positive intent to restrain prevailed, or there was a purpose to do acts the natural and probable effect of which would be to impose any of the restraints alleged. Another and different purpose would not suffice, even if wrongful, for the Government must prove the charge as laid—not some other offense.

If it be true, as defendants claim, that the District Society, acting only to protect its organization, regulate fair dealing among its members, and maintain and advance the standards of medical practice, adopted reasonable rules and measures to those ends, not calculated to restrain Group Health, there would be no guilt, though the indirect effect may have been to cause some restraint against Group Health. It would be justified if but an incidental result of reasonable regulation of the membership and affairs of the organization, for the statute comprehends only such restraints as do directly and unreasonably affect freedom of competition in the trades and professions.

In joining the District Society members assumed the duty of compliance with laws and regulations thereof. The right to practice medicine gave a doctor no right to be a member of the Society. Discipline and control of members of a society, within reasonable bounds, are essential. When applied in good faith, under fair rules, without ulterior purpose to injure the business of a member or others, there is no wrong. However, such rules and regulatory actions cannot be justified where the real purpose, or the natural results, are to interfere with free competition.

The defendant physicians had the individual right to determine with what other physicians they would consult,

and refusal to do so with particular physicians is not of itself illegal. Although, if, as alleged, it was done in furtherance of a conspiracy against Group Health and its doctors, it would be illegal. So too, a doctor may refuse to treat patients in a particular hospital for any reason at all, but if a group of doctors, pursuant to a concerted scheme, refused so to do to injure the business of the hospital, their acts would be illegal; for in the eyes of the law there is danger to the public interests where many combine and act together to interfere with the free play of competitive forces in business and professions.

There was no duty on the societies, their officers or members, to approve Group Health or its plan of medical care. They could not rightfully oppose in a manner intended to restrain its operations. But they did have the right of legitimate criticism, argument and persuasion, however persistent and severe; either separately or by collective effort; through the medium of speech, letters or print. If their opposition was thus confined, and did not take the form of a conspiracy to restrain, or was not done in pursuance of such a scheme, there was no violation of the statute.

So too, the "White List" of the District Society and the Mundt Resolution of the American Society were not wrongful in themselves. Their apparent purposes were justifiable, and if those were in fact the real objects, the defendants had the right to combine and act together to promote the same in good faith; but if they were perverted to advance the aims of a conspiracy, any steps thus taken would bring the actors within the criminal scheme.

The hospitals had the lawful right to prescribe rules and regulations governing the use of their facilities by doctors and patients. In their boards was vested the authority to decide what physicians would be allowed the privileges. A doctor had no right to demand them. To grant or refuse the same rested solely with the hospital. Therefore, if denial of privileges to Dr. Selders, or other members of the Group Health staff, represented the voluntary decision of the boards, no question would arise as to the legality of their acts. However, if refusal was arbitrary and to serve a criminal conspiracy against Group Health or their doctors, it would violate the statute.

Much evidence relates to the so-called background of the alleged conspiracy. It is intended to show power of the

medical societies over doctors and hospitals and opposition to certain forms of medical practice. No inference of guilt can be drawn from such evidence alone; nor from any power or opposition it may reveal, because those acts were before the alleged conspiracy. Therefore, that evidence can only be considered as it may shed light upon the intent and effect of later acts within the period of the alleged conspiracy.

Numerous letters, writings and oral statements of defendants and other persons have been proven. In many instances the authors have testified to the meaning they intended. However, arguments of counsel reveal frequent conflict as to the true meaning. It will be for you to interpret the writings and declarations fairly, in the light of all the evidence. If, when so considered, any are deemed equally susceptible of two meanings, one indicative of guilt, the other of innocence, then I think it only fair that you favor the innocent interpretation, just as you would in dealing with circumstantial evidence or the ultimate questions on which a verdict depends where there appear two reasonable theories or hypotheses one equally as reasonable as the other.

The respective merits of differing methods of medical care are not an issue in this case. Advocates and adherents of each are entitled to their views and may follow their choice. They had the right to support the same by fair competition and to oppose by way of discussion, argument and persuasion. But neither group would be justified in conspiring to restrain the activities of the other.

The legality of Group Health, or its methods of providing medical care, or the quality thereof, or its financial condition, or the grant of money by others to it are not issues in the case.

The defendants, however, had the lawful right to discuss and to argue these matters in opposition to Group Health Association and its methods of medical care, and to do so would constitute no violation of the statute.

In judging of the evidence you must necessarily evaluate the testimony of individual witnesses. Only thus can you determine the truth, and it is the truth you must seek. Bring to that task your knowledge of human nature; your ability to judge of men; their sources of knowledge; their intelligence; their motives; their intentions, so you may

discern the real character behind the spoken words and measure their weight of truth and accuracy.

Interest in those things involved within the controversy or its results; friendship or animosity towards persons concerned therein, and many other human factors, may or may not affect the desire and capacity of a witness to tell the truth, depending largely upon his innate character. Give to the testimony of each witness only that weight to which in your good judgment it is entitled when tested by the foregoing considerations and the light of other evidence in the case. Interpret writings and declarations fairly according to reason and probabilities, as the circumstances surrounding their making may reflect a true meaning.

In your deliberations give thought to the views of your fellow-jurors. By full and free discussion, apply your best reason and judgment. Without sympathy or prejudice, calmly and dispassionately endeavor to reach a common understanding as to the truth, and return a verdict accordingly.

And now, ladies and gentlemen, as you retire to consider of your verdict, and throughout the course of your deliberations, be ever mindful of the solemn obligation imposed by your oath as jurors to render a true verdict according to the evidence; so help you God!

Is there anything further?

Mr. Lewin: The Government has nothing further, your Honor.

Mr. Leahy: May we approach the bench?

The Court: Yes.

Mr. Richardson: If your Honor please, the defendants now object to sending with the jury in their deliberations a copy of the indictment in this case, for the reason that the same contains irrelevant, incompetent, and prejudicial matter in its allegations.

Objection overruled and exception to defendants.

The defense excepts to the charge with reference to disbelieving the testimony of a witness, because the charge does not permit the corroboration of such testimony by other credible testimony in the case.

Exception is further noted to the charge of the Court with respect to eliminating the belief of the defendants, the character of medical service, the financial soundness of the method of practice of Group Health Association, and the

subsidization of such corporation by persons not members.

The defendants further object to the definition stated in the charge as to what facts would establish a violation of law.

The defendants further except to the statement in respect to violation of the Sherman Act by restraints which are not defined as unreasonable.

Mr. Magee: We want exceptions in the record and objections to the correctness of all the prayers granted to the Government which were read by the Court, as incorrect, misleading, and improper statements of the law pertaining to the facts in this case. We contend that the charge concerning what constitutes a conspiracy and how new conspirators can enter that conspiracy is misleading and prejudicial, as the charge as to conspiracy seems to ignore the fundamental principle that the gist of conspiracy is an unlawful agreement which must, under all the circumstances, be found to exist as a fact, particularly where a specific intent is charged.

We contend, further, that the charge over-emphasizes the allegations of the indictment without proper charges in the proper place. These allegations are no evidence against the defendants. We contend that it is error to charge that the defendants can be convicted on any single restraint or purpose charged in the indictment, as the indictment charges a large conspiracy to accomplish given purposes, and it cannot be proven by a number of smaller conspiracies.

We particularly object to the charge that they can be found guilty of a violation of the Sherman Act because of restraints on members of G. H. A. Further, we contend that the reference to the Society's approved list, constantly in the charge, as a White List instead of as an approved list, is prejudicial.

We contend that under the allegations of this indictment it was error to charge that the defendants could be found guilty because purpose might be inferred from natural and probable results and not be shown to be a specific intent, which is the gist of the charge.

We contend that it is error to include the activities of the profession, Group Health Association doctors, and the hospitals as within the scope of the Sherman Act.

We contend it was error to charge that natural results can interfere with competition.

We contend that the defendants can combine, and that it was error for the Court to charge that they cannot combine to injure G. H. A.—as the evidence discloses a labor dispute clearly within the meaning of the Norris-LaGuardia Act and the Clayton Act and renders all of the restraints charged legal; so it was error to charge that neither group could restrain the other.

Mr. Burke: The defendants except because the reasonable doubt charge tendered by the Government and given by the Court was error, particularly the description of what is a reasonable doubt.

The defendants except to that part of the charge which tells the jury that the practice of medicine is a trade, that the operation of the hospitals involved in this case was a trade, that the business of G. H. A. was a trade, and that the activities of the members of G. H. A. were a trade, all within the meaning of the Sherman Act.

Mr. Magee: We except, further, to the failure of the Court to include within the charge the instructions submitted by the defendants and heretofore refused.

Objections overruled and exception noted.

The Court: Ladies and gentlemen, you may retire.

(Whereupon, at 11:10 o'clock a. m., the jury were furnished a copy of the indictment and retired to consider their verdict.)

VERDICT OF THE JURY

(Thereupon, at 11:30 p. m., the jury returned to the courtroom, whereupon the following proceedings were had:)

The Court: I want to say this to those present: whatever the verdict may be I want it to be accepted in silence; no demonstration of any kind whatever. Please observe that.

By the Assistant Clerk:

Q. Mr. Foreman, have you agreed upon a verdict?

The Foreman: We have.

Q. Has the jury agreed upon a verdict?

The Foreman: Yes.

Q. What say you as to the defendant American Medical Association?

A. Guilty.

Q. What say you as to the District Medical Society?

A. Guilty.

Q. What say you as to the defendant Arthur Carlisle Christie?

A. Not guilty.

Q. What say you as to the defendant Coursen Baxter Conklin?

A. Not guilty.

Q. What say you as to the defendant James Bayard Gregg Custis?

A. Not guilty.

Q. What say you as to the defendant William Dick Cutter?

A. Not guilty.

Q. What say you as to the defendant Morris Fishbein?

A. Not guilty.

Q. What say you as to the defendant Robert Arthur Hooe?

A. Not guilty.

Q. What say you as to the defendant Rosco Genung Leland?

A. Not guilty.

Q. What say you as to the defendant Thomas Ernest Mattingly?

A. Not guilty.

Q. What say you as to the defendant Francis Xavier McGovern?

A. Not guilty.

Q. What say you as to the defendant Thomas Edwin Neill?

A. Not guilty.

Q. What say you as to the defendant Edward Hiram Reede?

A. Not guilty.

Q. What say you as to the defendant William Mercer Sprigg?

A. Not guilty.

Q. What say you as to the defendant William Joseph Stanton?

A. Not guilty.

Q. What say you as to the defendant John Ogle Warfield, Jr.?

A. Not guilty.

Q. What say you as to the defendant Olin West?

A. Not guilty.

Q. What say you as to the defendant Prentiss Willson?

A. Not guilty.

Q. What say you as to the defendant William Creighton Woodward?

A. Not guilty.

Q. What say you as to the defendant Wallace Mason Yater?

A. Not guilty.

Q. The jury says that the defendant American Medical Association is guilty; the District Medical Society is guilty; the defendants Arthur Carlisle Christie, Coursen Baxter Conklin, James Bayard Gregg Custis, William Dick Cutter, Morris Fishbein, Robert Arthur Hooe, Rosco Genung Leland, Thomas Ernest Mattingly, Francis Xavier McGovern, Thomas Edwin Neill, Edward Hiram Reede, William Mercer Sprigg, William Joseph Stanton, John Ogle Warfield, Jr., Olin West, Prentiss Willson, William Creighton Woodward, Wallace Mason Yater, are not guilty?

A. Yes.

Q. And so say you each and all?

(Jurors individually answered in the affirmative.)

Q. And that is your verdict?

(Jurors individually answered in the affirmative.)

Exception noted by the defendants to the verdict.

MOTION TO SET ASIDE VERDICT AND FOR JUDGMENT FOR DEFENDANTS

Come now defendants, American Medical Association, Incorporated, and The Medical Society of the District of Columbia, Incorporated, by their attorneys, and severally and individually and without waiving any other Motion herein filed or to be filed, move the Court to set aside the verdict herein as to each defendant, and to enter judgment of not guilty as to each defendant notwithstanding the verdict herein, on the following grounds:

(1) The law holds a corporation can only act through its officers, agents and employees. In the present case as a matter of fact the evidence shows that the two corporations

could only have acted by their officers, agents and employees all of whom have been acquitted. As the theory upon which a corporation can be held criminally responsible is the theory that the illegal acts and criminal intentions of its employees can be imputed to the corporation, it follows that in the present case there is no factual foundation for inferring that the corporations are guilty.

(2) The indictment having charged that the acts were committed by the individual defendants, not as individuals but as agents of the two corporate defendants, and the individuals having been acquitted it follows that the corporations cannot be held.

(3) The indictment does not charge nor does the proof show that the activities of the defendants, or either of them, violated any law of the United States. There is nothing to show that they concern trade or commerce in the District of Columbia within the meaning of Section 3 of the Sherman Act.

(4) The indictment shows that the activities of Group Health Association, its doctors and members, constitute the illegal practice of medicine by a corporation, and therefore such activities could not be the subject of a conspiracy in restraint of trade under Section 3 of the Anti-Trust Law.

(5) The activities alleged and proved against the defendants, or either of them, were within their lawful rights.

(6) The jury having held the individual defendants are not guilty, there is no evidence left in the case with which to hold the corporate defendants.

(7) And for such other grounds as are apparent on the face of the record and the evidence herein and as may be argued at the hearing hereof.

Filed with supporting points and authorities on April 7, 1941.

MOTION IN ARREST OF JUDGMENT

Come now the defendants, American Medical Association and the Medical Society of the District of Columbia, by their attorneys, and, without waiving any other motion

filed or to be filed, move the Court to arrest the judgment herein and hold for naught the verdict of "guilty" rendered against these defendants, and for grounds therefor, state:

(1) The activities charged to the defendants or shown by the evidence do not violate any law of the United States.

(2) The activities charged to the defendants or shown by the evidence do not concern trade or commerce in and of the District of Columbia under Section 3 of the Sherman Act.

(3) The business, operations and activities of Group Health Association, Inc., its doctors and members, and others dealing with the corporation, are part and parcel of the illegal practice of medicine and the illegal operation of insurance business and could not be the subject of unlawful restraints under Section 3 of the Sherman Act.

(4) The activities charged to the defendants or shown by the evidence are all within the lawful rights of the defendants.

(5) Because of the nature of the offense charged and the acquittal of all individual defendants, particularly the officers and members of defendant corporations, being the only persons charged or claimed to have acted illegally for and on behalf of the defendant corporations, the verdict is a legal anomaly, and is unsupported by the evidence, and amounts, in law, to a verdict of "Not Guilty" against said defendant corporations.

(6) The verdict is contrary to law and the evidence.

(7) And for other grounds apparent on the face of the record or in the evidence.

Filed with supporting points and authorities on April 7, 1941.

Motion for New Trial

Come now the defendants, American Medical Association and the Medical Society of the District of Columbia, by their attorneys, and, without waiving any other motion filed or to be filed, move the Court to set aside the verdict in the above-entitled cause and to grant these defendants a new trial and for the grounds therefor state:

(1) The evidence in the record was insufficient to find the individual defendants guilty, and it is, therefore, not sufficient to find these defendants, or either of them, guilty. There is no evidence in the record to support the verdict except the evidence applicable to the activities of the individual defendants, and the record discloses that whatever was done by these corporate defendants was done, if at all, solely through the individual defendants who have been found not guilty.

(2) The Court erred in refusing to admit evidence and testimony offered by the defendants.

(3) The Court erred in holding that evidence offered by the defendants relating to the so-called \$40,000 payment of Home Owners Loan Corporation to Group Health Association, Inc., was irrelevant and could not be discussed to the jury in argument despite similar testimony theretofore received in evidence which remained before the jury.

(4) The Court erred in holding that testimony concerning and relating to Medical Dental Service Bureau, operated and carried on by the local defendants, was irrelevant.

(5) The Court erred in refusing to admit evidence tendered by the defendants pertaining to the solicitation of members and patients by Group Health Association, Inc., Home Owners Loan Corporation, and other persons acting on behalf of Group Health Association, Inc.

(6) The Court erred in rejecting evidence offered by the defendants tendered to show advertising on behalf of Group Health Association, Inc., pertaining to the medical services of members of Group Health Association, Inc.

(7) The Court erred in refusing to admit testimony tendered by the defendants tending to show subsidies paid in money, services, or other things of value, to Group Health Association, Inc., by The Twentieth Century Fund, Inc., Good Will Fund, Inc., Health Economics Association, Inc., Home Owners Loan Corporation, credit unions, and others.

(8) The Court erred in restricting the evidence offered by the defendants pertaining to the quality, nature and character of the medical services proposed and furnished by the Group Health Association, Inc.

(9) The Court erred in refusing evidence tendered by the defendants of the contract and the amended contract be-

tween Home Owners Loan Corporation and Group Health Association, Inc., wherein Group Health Association, Inc., as a corporation, promised to render medical services to Home Owners Loan Corporation for a consideration.

(10) The Court erred in refusing to receive testimony and evidence under offers of proof by the defendants pertaining to the illegality of the operations and activities of Group Health Association, Inc., its doctors and members, and other persons doing business with the Association.

(11) The Court erred in refusing to receive testimony and evidence under offers of proof by the defendants pertaining to the belief of the defendants in the illegality of the operations and activities of Group Health Association, Inc., its doctors and members, and other persons doing business with the Association.

(12) The Court erred in refusing testimony offered by the defendants tending to prove that one of the reasons for the disapproval or non-approval of Group Health Association, Inc., under the constitution of the defendant Medical Society of the District of Columbia, was an understanding and belief on the part of the Defendants that the said Group Health Association, Inc., was engaged in the illegal practice of medicine and the illegal operation of an insurance business in the District of Columbia and was the recipient of public moneys unlawfully paid to the said Group Health Association by the Home Owners Loan Corporation; together with the receipt by Group Health Association, Inc., of various subsidies from the various persons and agencies hereinbefore mentioned.

(13) The Court erred in refusing to admit evidence tendered by the defendants showing their reasons for their argument and persuasion pertaining to Group Health Association, Inc.

(14) The Court erred in refusing to admit evidence offered by the defendants pertaining to a justification on their part for any of the claimed restraints pertaining to the practice of medicine, the furnishing of medical services, the activities and operations of Group Health Association, Inc., its doctors and members, or other doctors, and the business of the Washington hospitals.

(15) The Court erred in rejecting evidence contained in the offers of proof of the defendants.

(16) The Court erred in admitting evidence offered by the United States.

(17) The Court erred in admitting in evidence the statements, oral and written, the letters and the remarks of the individual defendants heretofore found not guilty under the verdict.

(18) The Court erred in receiving evidence concerning the so-called "background" of the conspiracy charged in the indictment and in overruling the motion of the defendants to strike this evidence from the record.

(19) The Court erred, because of the prejudicial statements contained therein, in permitting the jury to take the indictment with the said jury into the jury room for examination and consideration by the said jury.

(20) The Court erred in admitting evidence of or pertaining to the Washington hospitals and the activities thereof in relation to Group Health Association, Inc., its doctors and members, and in overruling the motion of the defendants to strike such evidence from the record.

(21) The Court erred in denying the motions of these defendants and each of them for a directed verdict at the close of the Government's case.

(22) The Court erred in denying the motions of these defendants and each of them for a directed verdict at the close of all the evidence.

(23) The Court erred in charging the jury, among others, in the following respects:

(a) In charging that the practice of medicine, the furnishing of medical services, the activities and operations of the Group Health Association, Inc., its doctors and members, and the business of the Washington hospitals were trade of the District of Columbia and each within the purview and scope of Section 3 of the Sherman Act.

(b) In charging the jury of the nature and character of the offense alleged and the type and character of evidence sufficient for a conviction.

(c) In defining "reasonable doubt."

(d) In charging the defendants could be found guilty of the offense charged in the indictment by proof of any

single purpose or intent as set forth as a part of the general conspiracy alleged, and particularly that intended restraint of members of Group Health Association, Inc., was sufficient basis for a conviction.

(e) In charging that the beliefs of the defendants concerning the illegality and unethical and improper character of the operations of Group Health Association, Inc., and its economic unsoundness and financial setup, including subsidies, were irrelevant.

(f) In charging the operations of Group Health Association, Inc., were legal and irrelevant.

(g) In charging that it was unnecessary for a conviction for the United States to prove the specific intent charged in the indictment.

(h) In charging that aiding and abetting made a defendant a conspirator.

(i) In charging the defendant corporations had no legal right to restrain Group Health Association, Inc., or do the other activities described in the indictment.

(j) In granting and giving the charges or instructions requested by the United States.

(k) In modifying and, as so modified, giving instructions tendered by the United States.

(l) In refusing and failing to give certain charges or instructions requested by the defendants.

(m) In modifying and, as so modified, giving instructions tendered by the defendants.

(n) In failing to properly charge that restraints to be illegal under Section 3 of the Sherman Act must be direct, material, and unreasonable.

(24) The charge of the Court was prejudicial, among others, in the following respects:

(a) It overemphasized to the prejudice of the defendants, the allegations of the indictment without proper protective instructions.

(b) It was highly misleading.

(c) It characterized the approved list of the defendant Medical Society of the District of Columbia as a "white list."

(24) The verdict is contrary to law.

(25) The verdict is contrary to the evidence.

(26) The verdict is contrary to the weight of the evidence.

(27) The verdict is a legal anomaly and is repugnant to the law and evidence.

(28) And for other reasons apparent on the face of the record or in the evidence.

Filed with supporting points and authorities on April 7, 1941.

By stipulation of the parties and order of Court dated April 10, 1941, the defendants' Motion to Set Aside the Verdict and For Judgment, Motion in Arrest and Motion For New Trial were set for argument, and submission under advisement on May 2, 1941. On May 2, 1941 said Motions were argued, submitted and taken under advisement by the Court. On May 29, 1941, the following proceedings occurred:

The above-entitled cause came on for hearing on motions filed by American Medical Association and The Medical Society of the District of Columbia, defendants, for:

(1) Judgment Non Obstante Verdicto

(2) In arrest of Judgment

(3) For a New Trial

before Associate Justice James M. Proctor, in Criminal Division No. 2, at 12:30 p. m. o'clock, Thursday, May 29, 1941.

Proceedings

The said motions (1) For Judgment Non Obstante Verdicto; (2) In Arrest of Judgment, and (3) For a New Trial having heretofore been argued, and decision thereupon having been by the Court taken under advisement, it is ordered that said motions, and each of them, be and the same are denied. Exception noted.

It is further ordered, and it is the judgment of this Court, that defendant, American Medical Association, a Corporation, do pay a fine of Twenty-Five Hundred (\$2500) Dollars; and that defendant, The Medical Society of the District of Columbia, a corporation, do pay a fine of Fifteen Hundred (\$1500) Dollars.

And the Clerk is directed to enter said judgments accordingly.

Dated this 29th day of May, 1941.

Exception noted by the defendants and allowed by the Court.

Memorandum

All pending motions in various forms looking to the granting of a new trial are severally denied. The Clerk will enter the proper orders.

James M. Proctor, Justice.

Dated May 19, 1941.

Copies mailed to all Attorneys.

Following in handwriting:

"Above includes:

Motion in Arrest of Judgment.

Motion Non Obstante Verdicto.

Motion for New Trial.

J. M. P."

"Filed May 29, 1941.

Charles E. Stewart, Clerk."

Judgment

On this 29th day of May, A. D. 1941, came the United States Attorney, and the defendant by its attorneys, Messrs. Edward M. Burke, William E. Leahy, Seth Richardson, Charles S. Baker and Warren Magee; and the defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to-wit: Combination and Conspiracy in Violation of Section 3 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court.

Ordered And Adjudged that the defendant, American Medical Association, a corporation, pay a fine of Twenty-Five Hundred (\$2500) Dollars.

James M. Proctor, Justice. (Seal.)

Exception noted by the defendants and allowed by the Court.

Judgment

On this 29th day of May, A. D. 1941, came the United States Attorney, and the defendant by its attorneys, Messrs. Edward M. Burke, William E. Leahy, Seth Richardson, Charles S. Baker and Warren Magee; and the defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to-wit: Combination and Conspiracy in Violation of Section 3 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, and the defendant having been now asked whether it has anything to say why judgment should not be pronounced against it, and no sufficient cause to the contrary being shown or appearing to the Court, It Is By The Court.

Ordered And Adjudged that the defendant, The Medical Society of the District of Columbia, a Corporation, pay a fine of Fifteen Hundred (\$1500) Dollars.

James M. Proctor, Justice. (Seal.)

Exception noted by the defendants and allowed by the Court.

Order Extending Time Within Which to File Bill of Exceptions

On motion of defendants, American Medical Association and The Medical Society of the District of Columbia, it is ordered:

That American Medical Association, a corporation, and the Medical Society of the District of Columbia, a corporation, defendants, have until and including November 1, 1941, to settle and file herein a bill of exceptions.

Enter.

James M. Proctor, Judge.

"Filed June 3, 1941. Charles E. Stewart, Clerk."

Order Staying Execution Pending Appeal or Review and Making the Notices of Appeal When Filed Respectively a Supersedeas Without Bond

On motion of American Medical Association and Medical Society of the District of Columbia, it is ordered:

That pending proceedings on appeal or any other form of review in the Court of Appeals of the District of Columbia by said defendants and pending proceedings on certiorari or any other form of review in the Supreme Court of the United States by the said defendants, execution on the judgment and the collection of the fines and costs herein are hereby stayed without bond and the notices of appeal of said defendants when filed herein shall respectively operate as a supersedeas without bond.

Enter:

James M. Proctor, Judge.

No objection by Government. James M. Proctor. Filed May 29, 1941.

The exhibits of the United States received in evidence at the trial, but which were not read to the jury (unless printed in the body of the bill of exceptions) are compiled and printed in a separate volume and are incorporated herein.

Certificate

The foregoing is all of the testimony, evidence and proceedings, or the substance of all of the testimony, evidence and proceedings, had and heard on the trial of this case from the beginning thereof through the final judgments therein, and all of the exceptions reserved on behalf of the defendants.

And thereupon, and as all the said exceptions were duly noted and allowed as aforesaid and duly entered upon the minutes of the Court, and because the testimony, evidence, proceedings and exceptions hereinbefore recited do not fully appear of record, in order to make the same a part of the record herein, which is hereby ordered so that the defendants may have their case reviewed, the defendants by their attorneys move the Court to approve, settle, sign and seal this, the bill of exceptions, so that the same may henceforth be preserved and made of record, and to have the same force and effect as if each and every one of said exceptions

had been separately signed and sealed, which motion is granted by the Court; and thereupon the defendants tender this, their bill of exceptions, and request the Court to approve, settle, sign and seal the same, which is accordingly done, now for them, this 31st day of October, 1941.

By the Court:

JAMES M. PROCTOR. [SEAL.]
Justice.

Approved:

JOHN HENRY LEWIN,

GRANT W. KELLERER,

E. COMPTON TIMBERLAKE,

Attorneys for the United States, Plaintiff.

EDWARD M. BURKE,

WM. E. LEAHY,

SETH W. RICHARDSON,

CHAS. S. BAKER,

WARREN E. MAGEE,

Attorneys for the Defendants.

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Minute Entry Re Bills of Exceptions

Now comes here the defendants, American Medical Association, a corporation, and the Medical Society of the District of Columbia, a corporation, by their attorneys, Edward M. Burke, Seth W. Richardson, William E. Leahy, Charles S. Baker and Warren E. Magee, Esquires, and thereupon the Bill of Exceptions of each of the said defendants herein is submitted, settled, signed, sealed, made of record and filed this 31st day of October, 1941.

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DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF
COLUMBIA

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 1528, both inclusive, to be a true and correct transcript of the record, according to directions of the Court and counsel herein filed, copy of which is made part of this transcript, in cause entitled United States vs. American Medical Association, et al., Criminal No. 63221, as the same remains upon the files of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 31st day of October, 1941.

[SEAL]

CHARLES E. STEWART,
Clerk.

• • • • •
(Bill of Exceptions.) Filed October 31, 1941. Charles
E. Stewart, Clerk.